Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1997

PEOPLES BANK OF BLOOMINGTON,
as Successor Trustee of trusts created by the
Will of George F. Dick, Jr., deceased,
and as Trustee of trusts created by the
Will of Althea M. Dick, deceased,
Plaintiff,
v.
GEORGE F. DICK III, et al., Defendants;

HELEN A. DICK,
Petitioner-Appellant,
v.
PEOPLES BANK OF BLOOMINGTON,
Respondent-Appellee.

On Petition for a Writ of Certiorari to the
Appellate Court of Illinois, Fourth District

PETITION FOR WRIT OF CERTIORARI
(Separate Appendix filed)

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QUESTIONS PRESENTED FOR REVIEW

I.

Whether the April 16, 1997 decision of the Illinois appellate court is inconsistent with federal law as to due process and in conflict with relevant decisions of the United States Supreme Court and the Illinois reviewing courts---where the record shows a February 21, 1984 order finding that beneficiary Helen A. Dick was not a party to, and could not submit facts or argument pertaining to, any of the counts (Counts I-IV) then remaining---and where uncontroverted facts of her June 1996 petition to vacate show that plaintiff Peoples Bank of Bloomington had actual notice of the Will of George F. Dick, Jr. at all times after September 1955 and had participated with defendant George F. Dick III in acts set forth in said Counts I-IV (including a 1959 transfer of shares of the Capital Stock of said Bank to said George III, a transfer which a March 2, 1984 partial summary judgment order stated was "violative of the limiting provisions of" said Will).

II.

Whether the 1972 transfer of shares of the Capital Stock of the Peoples Bank of Bloomington to the use and beneficial enjoyment of a one-bank holding company was wrongful conversion and/or created constructive trusts (e.g., due to said holding company's subsequent purchase of a federal bank, First National Bank of Normal, with funds derived from the operation of said Peoples Bank of Bloomington).

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OPINION BELOW

The April 16, 1997 decision of the Illinois appellate court, the judgment herein sought to be reviewed, is an unpublished order. (A copy is at page 1 of the Appendix.)

JURISDICTION

The order sought to be reviewed was entered by the Illinois appellate court on April 16, 1997. Helen A. Dick's petition for leave to appeal to the Illinois supreme court was denied October 1, 1997.

Her Affidavit of Intent (to apply to the United States Supreme Court for a writ of certiorari) was filed and served on October 28, 1997, by next-day express mail. The jurisdiction of this Court is invoked under 28 USC § 1257 (a).

CONSTITUTIONAL PROVISION INVOLVED

Section I of the Fourteenth Amendment to the Constitution of the United States provides:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any persons within its jurisdiction the equal protection of the laws."

PERTINENT TEXT OF STATUTES CITED

735 ILCS 5/2-1401. Relief from judgments.

> "(a) Relief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section. Writs of error coram nobis * * * are abolished.
>
> (b) The petition must be filed in the same proceeding in which the order or judgment was entered but is not a continuation thereof. * * *
>
> * * * * *
>
> (f) Nothing contained in this Section affects any existing right to relief from a void order or judgment or to employ any existing method to procure that relief."

735 ILCS 5/13-215. Fraudulent concealment.

> "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards."

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STATEMENT OF THE CASE

I.
BACKGROUND FACTS

Testators George F. Dick, Jr. (an attorney) and Althea M. Dick (born Helen Althea Marsh) had three natural children: Helen Dick (who had no middle name or initial); Eleanor Dick; and George F. Dick III. All three (born, respectively, in 1911, 1912 and 1919) died in 1992. Beneficiary Helen A. Dick (born in 1932, during Eleanor's first marriage) was named for her maternal grandmother ("Helen Althea"); and was legally adopted by her said maternal grandparents when she was three years old, in connection with Eleanor's first divorce. Eleanor soon remarried (becoming Eleanor Lyon) and Helen A. Dick continued to live with and be parented by said George F. Dick, Jr. and Althea M. Dick. Helen A. married, divorced, and resumed the use of her maiden name after her children were grown.

George F. Dick, Jr. died May 8, 1955. George III (an attorney) and Althea M. Dick were Co-Executors of George Jr.'s will, a will which gave Althea "full possession and sole management" of all of her late husband's property "for as long as she shall live." One of the Bank's attorneys has admitted that said will gave Althea the right to sell "any of the property for her own purposes" (Sept. 1, 1994 transcript, Vol. XXI, p. 17 at 13-18 and p. 18 at 15-16).

The only restriction on Althea as to her late husband's property was as follows:

> "No interest under this Will shall be transferable or assignable by any beneficiary (except by the Wills of Helen Dick and Helen A. Dick as provided above) or subject to the claims of their creditors * * *."

Where Althea had unlimited power/right to sell any or all property of her late husband's estate (including but

not limited to any or all shares of the Capital Stock of the Peoples Bank of Bloomington) and unlimited power/right to consume sales proceeds (e.g., without having to first exhaust her own assets), the trust created by George Jr.'s will could not be funded until after Althea's death. Furthermore, it could not be determined until after Althea's death whether there were or would be any shares of the Capital Stock of the Peoples Bank of Bloomington remaining in said estate.

George Jr.'s said will provided for his estate to remain open until after Althea's death and referred to George III's capacity as "the remaining Executor" after Althea's death. However, George III obtained an order of discharge in July 1956.

A copy of the will of George F. Dick, Jr. (dated July 14, 1953) is at Appendix page 62. The only trust established by George Jr.'s said will was f/b/o the aforesaid three daughters (including Helen A. Dick) and was to terminate upon the death of Eleanor (who died January 12, 1992). In his said will, Attorney George F. Dick, Jr. referred to mutual provisions of Althea's will as follows:

> "My wife, Althea M. Dick, in her Will has established a Trust similar to the one I have established here and I authorize the Trustee in each of said Wills to consolidate the Trust in my Will and my wife's Will and to operate it as one Trust Estate."

Althea died October 10, 1976. Having obtained the aforesaid order of discharge in July 1956, George III did not file a final report in 1976 as to George Jr.'s estate. Instead, George III immediately began acting as testamentary trustee of the aforesaid trust and, simultaneously, began acting as executor of Althea's estate.

II.

On or about December 26, 1978, Peoples Bank

of Bloomington became trustee. The Bank administered these trusts for almost four years without filing an action to compel accountings from George III or for will construction.

III.
FACTS AS TO THIS CASE IN 1982-1984

On September 22, 1982, the Bank commenced this case by filing a pleading entitled "Construction of Testamentary Trusts" (Vol. I, C-19, Appendix page 49). Helen A. Dick was a party to Counts V-VII.

Counts V and VII of the Bank's pleading were dismissed by the court on January 18, 1983 (Record Sheet entry of even date, Vol. I, C-3). Count VI (a count praying only for discovery) was voluntarily dismissed by the Bank on February 15, 1984 (Record Sheet entry of even date, Vol. I, C-9).

Circuit Judge Baner entered a February 21, 1984 order finding, among other things, that beneficiary Helen A. Dick had filed affidavits (e.g., in support of the Bank's motion for partial summary judgment), that she was not a party to any of the counts remaining (i.e., Counts I-IV) and that she could not submit facts or present argument as to then-pending motions for summary judgment. (A copy of said order, Vol. VII, C-1564, is at Appendix page 20.)

On March 2, 1984, Judge Baner entered a partial summary judgment order finding inter alia that (as to the 1959 transfer of 80 shares of the Capital Stock of the plaintiff Bank to George F. Dick III) any transfer of interest in shares by Althea M. Dick prior to her death was violative of the limiting provisions of the will of George F. Dick, Jr.---and finding that said George F. Dick III should account for all shares from the date of the March 31, 1959 transfer to the date (October 10, 1976) of Althea's death. (A copy of said March 2, 1984 order, Vol. VII, C-1583, is at Appendix page 17.)

Before any accounting was submitted, and on the date scheduled for a bench trial to begin, the Bank and George III filed a Stipulation alleging that the then-pending claims of said parties had been "fully compromised and settled" and that the cause should be dismissed as to said parties (Vol. VII, C-1617, Appendix page 15). Judge Baner entered the attached (proposed) order that same date (March 14, 1984).

The record shows that the settlement agreement was not filed with the court; that Judge Baner took no part in the settlement; and that he did not review or approve it. His Record Sheet entry of March 14, 1984 (Vol. I, C-12) reads in pertinent part (emphasis added):

> "Cause comes on for hearing on B.T. [bench trial]. Counsel for Plaintiff and for Defendant present Dismissal Stipulation re pending issues. Beneficiary Helen A. Dick objects. Argument heard re settlement without beneficiary's approval. Authorities reviewed and Court offers to consider approval of settlement if requested by Plaintiff Trustee. Not Requested. Case dismissed Per Stipulation over objection of Helen A. Dick. * * *."

IV.

HELEN A. DICK FILED A 1994 PETITION PRAYING FOR THE VACATION ONLY OF SAID MARCH 14, 1984 ORDER WHICH HAD PERMITTED DISMISSAL PER THE ATTACHED STIPULATION.

Said petition (Vol. XVII, C-3793, pertinent portions are at Appendix page 43) focused on what she alleged was an improper settlement for an insufficient amount.. Because she was not attempting to vacate the aforesaid February 21, 1984 order as to her lack of standing to submit facts or argument as to the (underlying) Counts I-IV causes of action, she failed to show a (principal) cause of action to vacate any order.

V.

FACTS AS TO THIS 1996 ACTION

At paragraphs 4, 5 and 6 in Section "B" of beneficiary Helen A. Dick's June 13, 1996 petition to vacate (Vol. XX, C-4225, Appendix page 21), she describes three (3) orders entered by Judge Baner in 1984. At paragraph 7 of said Section "B", she states inter alia that said three orders are void.

> "4. On February 21, 1984, Judge Baner entered an order * * * finding, among other things, that Helen A. Dick was not a party to any of the counts then remaining (Counts I, II, III and IV) and that she was not permitted to submit factual matters or present argument as to pending Summary Judgment Motions.
>
> 5. On March 2, 1984, Judge Baner entered an order * * * as to some of the substantial issues. As to Count I, it was determined by Judge Baner that the transfer of shares to George F. Dick III prior to Althea M. Dick's death violated the provisions of the Will of George F. Dick, Jr. Said order directed George III to account for all shares from March 31, 1959, the date of the transfer of shares to George III, through October 10, 1976, the day of Althea's death. Neither of the parties (i.e. the Bank and George III) appealed from said order.
>
> 6. On March 14, 1984, the date that had been scheduled * * * for a two-day bench trial to begin, counsel for the Bank and for George F. Dick III presented a dismissal stipulation to Judge Baner "re pending issues" (Record Sheet entry of March 14, 19840 and Judge Baner entered the Order attached to said stipulation * * *.
>
> 7. Through no fault or negligence on the part of beneficiary Helen A. Dick, the

> aforesaid orders were erroneously entered, are void, and should be set aside and vacated (in whole or in part) as to her interests. * * *."

Her said June 1996 petition (Vol. XX, C-4225, Appendix page 21) prays for the vacation of each 1982-1984 order and/or finding as to Counts I, II, III and IV of the trustee Bank's September 1982 pleading (Vol. I, C-19, Appendix page 49) that was against her interests, "including but not limited to Judge Baner's March 2, 1984 finding in favor of George F. Dick III as to the issue of remainder distribution of shares." She also prays, among other things, that she be brought in as party plaintiff to said Counts I-IV and that the Bank be realigned as party defendant to said Counts I-IV.

On June 27, 1996, Judge Baner entered a docket order (Vol. I, C-17 B, Appendix page 11) ordering Helen A. Dick to file and serve a written specification as to the date of each order challenged as void.

Her resulting "Specification" was filed July 2, 1996 (Vol. XX, C-4259, Appendix page 41), stating (among other things) that the aforesaid orders of February 21, 1984; march 2, 1984 and March 14, 1984 were the subject of her June 13, 1996 petition to vacate. In her said "Stipulation," Helen A. Dick also stated, among other things:

> "Said orders are described with greater particularity at pages 4-5 (paragraphs 4 through 6), page 9 (paragraphs 9 and 10) and page 17 (paragraph D of the prayer for relief) of said June 13, 1996 petition."

[Said paragraphs of the June 1996 petition are, respectively, at pages 25, 29 and 38 of the Appendix.]

On August 1, 1996, Judge Baner entered a docket order (Vol. I, C-17 D, Appendix page 10) by which he, among other things, allowed Helen A. Dick's motion for leave to correct typographical errors.

VI.
FACTS AS TO WHEN AND HOW THE FEDERAL QUESTION OF DUE PROCESS WAS RAISED

Fact pleading, in contrast to notice pleading, is required in Illinois. Adkins v. Sarah Bush Lincoln Health Ctr. 129 Ill.2d 497, 518 (1989). The federal question of due process was raised first in the title of Helen A. Dick's June 1996 "Verified Petition to Vacate (as to Helen A. Dick's Interests) Orders Which Were and Are Void Because of the Trustee Bank's Failure to See that All Necessary Parties Were Before the Court as to Counts I, II, III and IV."

The due process question was further raised at paragraphs 6 and 7 of her said June 1996 petition to vacate (Vol. XX, C-4225, Appendix page 21), wherein she pleaded facts as to when and how she learned that she had been denied due process and that she had this cause of action (to vacate, to be brought in as party plaintiff and for the Bank to be realigned as party defendant) which the Bank (her trustee) had concealed from her.

> "6. The trustee Bank's acts in filing and in serving its September 1982 7-count pleading (Vol. I, C-19) were overt acts by which the trustee Bank represented (to the court and to beneficiary Helen A. Dick) that said Helen A. Dick had been made a party to all counts to which she was a necessary party.
>
> 7. As set forth in her supporting affidavit (Exhibit "A" attached hereto):
>
> (a) Helen A. Dick did not know or discover until October 1995 (while preparing a petition for leave to appeal to the Illinois supreme court) that it is a plaintiff's duty (in the instant case, the trustee Bank's duty) to see and to know that all necessary parties are before the court or the orders obtained will not be binding.

Hopkins v. Roseclare Lead Co. 72 Ill. 373, 378 (1874).

(b) Helen A. Dick did not know or discover until preparing a petition for writ of certiorari, in December 1995, that due process requires more than merely being served with a pleading. Due process requires an opportunity to be heard at a meaningful time and in a meaningful manner. U.S. Const. Amend. 14. Logan v. Zimmerman Brush Co. 455 U.S. 422, 71 L.Ed.2d 265, 279 (1982). Illinois Const. of 1970, Art. I, sec. 2.

(c) * * *

(d) Helen A. Dick did not know or discover until May 1996, that each order entered as to Counts I, II, III and IV of the Bank's 1982-1984 action is void for the following reasons. Facts which were not before Judge Baner would, had they been before him, have revealed that each said count involved a controversy between the trustee Bank and the beneficiaries (including Helen A. Dick). Although a trustee may ordinarily represent the interests of beneficiaries, the beneficiary is a necessary party if a complete determination of the controversy cannot be had unless he is made a party, as where a suit involves a controversy between the trustee and the beneficiaries. Restatement (2d) Trusts § 280 (i), (1959). The requirement of joinder of necessary parties is absolute and inflexible. Adoption of Ledbetter 125 Ill.App.3d 306, 308 (1984). If the lack of parties is brought to the attention of the court, whether one of original or appellate jurisdiction, the court should not proceed further in the matter until the omission has been corrected, even though no objection is

made by any party litigant. Giese v. Terry 382 Ill. 34, 41 (1943)."

Section "C" of said June 1996 petition to vacate (Vol. XX, C-4225; said Section is at Appendix page 26) begins: "The Following Maters of Fact Were Not Before the Court in the Bank's Action. Such Facts, Had They Been Before the Court, Would have Prevented the Entry of the Aforesaid 1984 Orders by Showing that Counts I, II, III and IV Each Involved a Controversy Between the Trustee Bank and the Beneficiaries (including Helen A. Dick."

VII.

FACTS AS TO WHEN AND HOW THE FEDERAL QUESTION OF CONVERSION WAS RAISED

Facts in the 1996 petition to vacate (Vol. XX, C-4225, Appendix page 21) raised the question of conversion and showed that this is a federal question, as follows:

> "6. Each of the aforesaid Stock Holders Ledger pages bearing any 1972 entry also bears the words:
>
> 'PBB SHARES CONVERTED TO PEOPLES MID-ILLINOIS CORP.'
>
> thus showing that all shares of the Capital Stock of the Peoples Bank of Bloomington (and its Stock Holders Ledger) including but not limited to shares which were property of the estate of George F. Dick, Jr. (e.g., the shares then still registered to Althea as life tenant and 2,400 of the shares registered to George III) were converted on or about June 30, 1972 and/or July 3, 1972 to the use and beneficial enjoyment of said Peoples Mid-Illinois Corporation."

Said paragraph 6 is at Appendix page 29.

> "1. In or about 1985, the aforesaid one-bank holding company (Peoples Mid-Illinois

> Corporation, a Delaware corporation) purchased an additional bank (First National Bank of Normal) with funds derived from the operation of Peoples Bank of Bloomington. * * *
>
> 2. On or about March 1, 1995, Commerce Bancshares, Inc. (a Missouri corporation) obtained possession and control of "The Peoples Bank," subsequently changing the name of said bank to "Commerce Bank. Attached hereto (as Exhibit "B" are copies of pages 1, 33, 11, A-1 and A-40 of Securities and Exchange Commission Form 10-K, as published in the 1995 annual report of said Commerce Bancshares, Inc. * * *."

Said paragraphs 1 and 2 are at Appendix page 34.

[The aforesaid Exhibit "B" shows, among other things, Commerce Bancshare's representation that as of March 1, 1996, it owned or controlled "substantially all of the outstanding capital stock" of 14 national banking associations (located in Missouri, Illinois, Kansas and Nebraska), in addition to various state banks, a credit card bank, and "several non-banking subsidiaries" which are engaged in (among other things) owning real estate and leasing the same to the Company's banking subsidiaries. "The Company also owns second tier holding companies which are the direct owners of several of the above mentioned banks."]

VIII.
THE FEDERAL QUESTIONS OF DUE PROCESS AND CONVERSION WERE PASSED ON BY THE TRIAL AND APPELLATE COURTS, NOT IN EXPRESS TERMS, BUT IN SUBSTANCE AND EFFECT.

Circuit Judge Caisley heard the Bank's motion for involuntary dismissal on August 30, 1996 and entered a docket order stating (among other things)

"that the judgments of this court and of the Fourth District Appellate Court are not void and that this court and the Fourth District Appellate Court had jurisdiction to hear and determine the issues raised therein; and that the petition filed June 13, 1996 is an impermissible collateral attack upon a final judgment." (Said docket order is at Vol. I, C-17 E, Appendix page 8.)

The written Judgment Order submitted by the Bank and entered by Judge Caisley on September 11, 1996 (Vol. XX, C-4355, Appendix page 6) allowed the Bank's Motion for Involuntary Dismissal and twice referred to Helen A. Dick's petition by its full title: "Verified Petition to Vacate (as to Helen A. Dick's Interests) Orders Which were and are Void Because of the Trustee Bank's Failure to see that All Necessary Parties were Before the Court as to Counts I, II, III and IV." Her said June 13, 1996 petition was dismissed with prejudice. She was assessed $300.00 payable to the Bank for attorney fees and permanently enjoined from initiating future litigation against the Bank (or against George III or his heirs).

The order from which Helen A. Dick appeals was entered by the Illinois appellate court on April 16, 1997. A copy of said order is at page 1 of the Appendix.

The appellate court affirmed Circuit Judge Caisley's judgment on grounds (i.e., res judicata and limitations) that do not apply where the orders being attacked are void. The Illinois courts thus apparently found that Helen A. Dick was not a necessary party to the underlying causes of action (i.e., the causes of action represented by the Bank's Counts I-IV) which was, in substance and effect, a finding that (among other things) the 1972 transfers of interest in shares of the Capital Stock of the Bank (which Helen A. Dick alleged was wrongful conversion) had been proper.

ARGUMENT AMPLIFYING THE REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

I.
PRINCIPLES OF LAW APPLICABLE TO ALL POINTS AND SUBPOINTS

A.

Due process requires an opportunity to be heard at a meaningful time and in a meaningful manner. U.S. Const. Amend. 14. Logan v. Zimmerman Brush Co., 455 U.S. 422, 71 L.Ed.2d 265 (1982). [The foregoing principle of law was before the appellate court at paragraph 7(b) of Helen A. Dick's June 1996 petition to vacate, Vol. XX, C-4225, Appendix page 21.]

Under both the Federal and Illinois Constitutions, the due process clause requires "at a minimum, that a party have a full and fair opportunity to litigate an issue before he is bound by that issue's resolution." CIPS v. Allianz Underwriters, 158 Ill.2d 218, 225 (1994).

Although a trustee may ordinarily represent the interests of beneficiaries, the beneficiary is a necessary party if a complete determination of the controversy cannot be had unless he is made a party, as where a suit involves a controversy between the trustee and the beneficiaries. Restatement (2d) of Trusts § 280 (i), (1959). [This principle of law was before the appellate court at paragraph 7 (d) of said petition to vacate.]

It is a plaintiff's duty to see and to know that all necessary parties are before the court or the orders obtained will not be binding. Hopkins v. Roseclare Lead Co., 72 Ill. 373, 378 (1874). [This principle of law was before the appellate court at paragraph 7 (a) of the aforesaid petition to vacate, Vol. XX, C-4225, Appendix page 21.]

B.

Illinois courts are expected to follow the doctrine of stare decisis. Pasquale v. Speed Products Engineering, 166 Ill.2d 337, 349 (1995). Maki v. Frelk, 40 Ill.2d 193, 196 (1968).

C.

A motion to dismiss admits all well-pleaded facts and any inferences which may be drawn from those facts. Quake Construction v. American Airlines, 141 Ill.2d 281, 289 (1990). Whenever the granting of a motion to dismiss is reviewed, all well-pleaded facts alleged in the complaint are taken as true. Wheeler v. Caterpillar Tractor, 108 Ill.2d 502, 505-506 (1985).

II.

THE DECISION OF THE ILLINOIS APPELLATE COURT IS IN CONFLICT WITH FEDERAL LAW AS TO DUE PROCESS AND IN CONFLICT WITH RELEVANT OPINIONS OF THE UNITED STATES SUPREME COURT AND THE REVIEWING COURTS OF ILLINOIS.

As shown hereinbelow, there are no state grounds to support the Illinois appellate court's order.

A.

TAKEN AS TRUE, UNCONTROVERTED FACTS SET FORTH IN SECTION "C" OF THE JUNE 1996 PETITION TO VACATE SHOW THAT THE BANK PARTICIPATED IN 1959 ET SEQ. ACTS SET FORTH IN COUNTS I-IV OF THE BANK'S 1982 PLEADING.

Because a conflict existed between interests of the Bank and interests of beneficiary Helen A. Dick, she was a necessary party to said Counts I-IV.

Said June 1996 petition to vacate (Vol. XX, C-4225) begins at Appendix page 21. It is a verified pleading supported by an attached affidavit and a

separate affidavit (Vol. XX, C-4349). The Bank did not file any counter-affidavit. Said Section "C" (18 paragraphs) begins at Appendix page 26.

As set forth at paragraph 1 of said Section "C," the Exhibits referred to (e.g., a Stock Certificate, Stock Holders Ledger pages, Minutes) were merely marked for identification during a pre-trial conference, thus were not "before" the court during the Bank's action. The Plaintiff Bank's said exhibits became a supplement to the record (Vol. XV, C-3133 et seq.) when Helen A. Dick appealed the dismissal of a counterclaim/cross-claim she had filed against George III.

Certain of the Plaintiff Bank's said exhibits are described at paragraphs 2 through 13 of the aforesaid Section "C" of the June 1996 petition to vacate (Vol. XX, C-4225, Appendix page 21). Copies of same are in the Appendix at page 80 et seq. A copy of the Will of George F. Dick, Jr. is at Appendix page 63. A copy of Bank's summary of loans which were the subject of its Count III is at Appendix page 77.

1.

<u>As to the Bank's Counts I-IV</u>

Counts I, II and IV of the Bank's 1982 pleading (Vol. I, C-19, Appendix page 49) pertained to 1959 et seq. stock transfers (and subsequent payments of shares), including the 1959 transfer to George III of 80 of the 91 shares of the Capital Stock of the Peoples Bank of Bloomington which had been owned by George F. Dick, Jr. at the time of his death.

Facts set forth and Exhibits referred to at paragraphs 2-10 of the aforesaid Section "C" (said Section begins at Appendix page 26) of Helen A. Dick's June 1996 petition to vacate show that at all times after September 1955, the Bank had actual notice of the Will of George F. Dick, Jr. (on Stock Certificates and in the Bank's Stock Holders Ledger). The Bank knew when

filing its 1982 complaint (and when marking said documents as Exhibits during the pre-trial conference of February 22, 1984) that the Bank had had actual notice of the Will of George F. Dick, Jr. when it made the aforesaid transfers (and subsequent transfers, payments and deliveries of shares and/or cash dividends). Said banking corporation also knew that notice of a will gives a corporation the duty, when asked to transfer shares, to refuse to make any transfer, payment and/or delivery of shares (and any subsequent transfer, payment and/or delivery of shares) that is violative of the provisions of such will. Seymour v. National Biscuit Co., 107 F. 2d 58, 62 (3d Cir. 1939). Daily v. Universal Oil Products Co., 76 F.Supp. 349, 371 (N.D. Ill. 1947). [The foregoing principle of law is set forth at paragraph 2 of Section "C" of Helen A. Dick's June 1996 petition to vacate; said Section "C" begins at Appendix page 26.]

The Bank attached a copy of the Will of George F. Dick, Jr. as Exhibit "A" to its 1982 pleading (Vol. I, C-19, Appendix page 49) At the end of paragraph 6 in Count I of its said pleading, the Bank quoted the following provision of the Will of George F. Dick, Jr.:

> "No interest under this Will shall be transferable or assignable by any beneficiary (except by the Wills of Helen Dick and Helen A. Dick as provided above) or subject to the claims of their creditors * * * ."

As a bank which holds itself out to the public for hire as a trustee, the Bank knows the effect of a will's spendthrift provision and has all along known that the 1959 et seq. transfers of interest (in shares) set forth in Counts I, II, and IV of its aforesaid September 1982 pleading are void because prohibited by the spendthrift provision of said Will of George F. Dick, Jr. McKeown v. Pridmore, 310 Ill.App. 634, 645-646 (1941).

1 (a).

Specifically as to the 1972 Transfer/Conversion

Paragraph 8 of Count I of the Bank's 1982 pleading (Vol. I, C-19, Appendix page 49) was a paragraph common also to its aforesaid Counts II and IV. The Bank's said paragraph reads as follows:

> "On or about August 1, 1967, there was a 30 for 1 split of plaintiff's stock, and on or about June 3, 1972 [sic], all of plaintiff's shares (except directors' qualifying shares) were exchanged on a 1 for 1 basis for shares of Peoples Mid-Illinois Corporation, a Delaware corporation and a one bank holding company, and on or about April 17, 1978, there was a 3 for 1 stock split of the shares of Peoples Mid-Illinois Corporation."

As set forth in Section "C" of Helen A. Dick's June 1996 petition to vacate:

> "6. Each of the aforesaid Stock Holders Ledger pages bearing any 1972 entry also bears the words:
>
> "PBB SHARES CONVERTED TO
> PEOPLES MID-ILLINOIS CORP."
>
> thus showing that all shares of the Capital Stock of the Peoples Bank of Bloomington (and its Stock Holders Ledger), including but not limited to shares which were property of the estate of George F. Dick, Jr. * * * were converted on or about June 30, 1972 and/or July 3, 1972 to the use and beneficial enjoyment of said Peoples Mid-Illinois Corporation.
>
> 7. As set forth in Helen A. Dick's affidavit (Exhibit "A" hereto), George F. Dick III (who died November 20, 1992) was a director of Peoples Mid-Illinois Corporation in January 1972 (if not before) and never resigned as a director of said holding company. George

> III thus was both a director of the Bank and a director of the one-bank holding company at the time of the aforesaid mid-1972 conversion.
>
> 8. The foregoing facts, had they been before the court during the Bank's 1982-1984 action, would have shown the court: (a) that the trustee Bank was not independent from defendant George F. Dick III because he was still a director of the one-bank holding company which governed the Bank's affairs; (b) that Counts I, II and IV each involved a conflict between the interests of the beneficiaries (including Helen A. Dick) and the interests of the Bank and/or said one-bank holding company."

At paragraph 10 of said Section "C," Helen A. Dick cited Sadacca v. Monhart, 128 Ill.App.3d 250, 255 (1984). The reviewing court in Sadacca (citing three opinions of the Illinois supreme court) stated, among other things, that "a constructive trust will be imposed to prevent a person [unfairly] holding title to property to profit from his wrong or be unjustly enriched by retaining [it]."

At 256-257 of Sadacca, the court (citing authorities, including a 1933 opinion of the Illinois supreme court) also stated:

> "When a person's property has been wrongfully appropriated and converted into a different form, equity impresses a constructive trust upon the new form or species of property * * * as long as it can be followed and identified into whosesoever hands it may come * * *."

The reviewing court added that even if the person receiving the benefit is innocent of collusion, if he accepts the property, "he adopts the means by which it was procured."

2.

As to the Bank's Count III

Count III of the Bank's 1982 pleading (Vol. I, C-19, Appendix page 49) pertained to George III's making loans to himself (totaling $112,900), beginning in June 1971, from funds which were property of the estate of George F. Dick, Jr.

Paragraphs 11-15 of the aforesaid Section "C" of Helen A. Dick's June 1996 petition to vacate set forth facts and refer to Exhibits (i.e., bank statements and a canceled check) showing, among other things, that Peoples Bank of Bloomington had failed to inquire into George III's authority to deposit and/or to withdraw estate funds and/or to hold himself out as a trustee during Althea's lifetime. A copy of the will of George F. Dick, Jr. was Exhibit "A" to the Bank's pleading (Vol. I, C-19, Appendix page 49). Said will contains the following terms and provisions which were quoted by Helen A. Dick at paragraph 11 of said Section "C" of her June 1996 petition to vacate. (Said Section "C" begins at Appendix page 26.)

> "I hereby give a life estate in all of my property to my wife, Althea M. Dick, she to have the full possession and sole management thereof as long as she shall live."

The Bank ought not to have permitted George III to open or maintain accounts in a purported capacity as fiduciary and/or trustee without inquiring into his authority to do so. The Bank ought not to have permitted George III to write checks to himself and his then-wife Marilyn with funds belonging to said estate. Furthermore, the Bank ought not to have permitted one of its employees (Ilene R. Beach) to write a $3,000 check payable to George F. Dick III on one of said accounts (as set forth at paragraph 13 within said Section "C" of Helen A. Dick's June 1996 petition to vacate; said Section "C" begins at Appendix page 26).

If a trustee deposits trust funds in a bank, the bank is liable for participation in the breach of trust in receiving or in permitting the trustee to withdraw the trust funds, where the trustee commits a breach of trust in making the deposit or withdrawal, if the bank received the deposit or permitted the withdrawal with notice of the breach of trust. Restatement (2d) of Trusts § 324 (1959). [This principle of law is set forth at paragraph 12 of said Section "C" of the June 1996 petition to vacate.]

3.

As a bank which holds itself out to the public for hire as a trustee, the Bank knew that facts which were not before Judge Baner would, had they been before him, have revealed that each said Count (I-IV) involved a controversy between the Bank and beneficiary Helen A. Dick, thus the Bank knew that she was a necessary party to said counts. Restatement (2d) of Trusts § 280 (i), (1959). [This principle of law is set forth within paragraph 7 (d) of Helen A. Dick's June 1996 petition to vacate (Vol. XX, C-4225); said paragraph 7 (d) is at Appendix page 24.]

By failing to name Helen A. Dick as a party to said Counts I-IV, the Bank insured that she was denied due process as to such causes of action.

As a bank which holds itself out to the public for hire as a trustee, the Bank has all along known that the principle of caveat emptor does not apply to fiduciary relationships. The trustee must not only be truthful in all his representations, he must not remain silent concerning any matter that would throw light on the trust estate. 90 C.J.S. Trusts, § 247, p. 240. The beneficiaries must not only have been acquainted with the facts, they must know of their rights and have been apprised of the law, and of how the facts would be dealt with by a court of equity. 76 Am Jur 2d Trusts, § 357,

p. 359. A trustee's failure to disclose amounts to fraudulent concealment. Chicago Park District v. Kenroy, 78 Ill.2d 555, 562 (1980). [The foregoing principles of law are set forth within paragraph 3 of Helen A. Dick's June 1996 petition to vacate, Vol. XX, C-4225, Appendix page 21.]

4.

Necessary parties are entitled to participate in the litigation of all questions affecting their interests and a decree is binding only on those beneficiaries who were then before the court. Oglesby v. Springfield Marine Bank, 385 Ill. 414, 430 (1944). The court has the duty to vacate a void order and thus expunge void acts from its records. People v. Magnus, 262 Ill.App.3d 362 (1994).

B.

COLLATERAL ESTOPPEL APPLIES AGAINST THE BANK AS TO SOME ISSUES.

Collateral estoppel applies against the Bank as to each issue that facts in her June 1996 petition now show were decided not only against George F. Dick III's interests, but also against the interests of the Bank. Housing Authority v. YMCA, 101 Ill.2d 246, 252 (1984). Such issues are set forth in Judge Baner's March 2, 1984 partial summary judgment order (Vol. VII, C-1583, Appendix page 17).

Count I of the Bank's 1982 pleading (Vol. I, C-19, Appendix page 49) set forth 1959 et seq. transfers of shares of the Capital Stock of the Peoples Bank of Bloomington. As set forth in his said March 2, 1984 order, Judge Baner found, among other things, that:

> "[A]ny assignment of interest in shares by Althea Dick prior to her death was violative of the limiting provisions of the Will of George F. Dick, Jr. * * * The defenses of res

> adjudicata, estoppel, laches or statute of limitation[s] are not established.
>
> The prayer for accounting is allowed as it relates to the period of March 31, 1959 to October 10, 1976 and as to all shares during such period. Ruling is reserved as to remaining issues."

Count II of the Bank's said 1982 pleading set forth facts as to a 1972 transaction by which Helen Dick borrowed money from the Bank to purchase holding company stock that was estate property and by which George III then purchased said shares from said Helen Dick (using liquid assets of the George F. Dick, Jr. estate), with the result that the holding company (Peoples Mid-Illinois Corp.) registered the shares in George III's name as a purported "Trustee" during the lifetime of Althea M. Dick (who died in October 1976). Judge Baner's March 2, 1982 order denied both the Bank and George III's motions for summary judgment.

As to Count III (which set forth loans George III made to himself from liquid assets of George Jr.'s estate during the lifetime of Althea M. Dick), Judge Baner found that the burden of proof had shifted to the defendant and that defenses of laches and res judicata were not established.

Count IV pertained to George III's sale of holding company (Peoples Mid-Illinois Corp.) stock out of the estate of Althea M. Dick to said holding company while George III was both executor of said estate and Chairman of the Board of said purchasing corporation (Peoples Mid-Illinois Corp.). Judge Baner found, among other things, that laches and res judicata had not been established.

C.

THE JUNE 1996 PETITION TO VACATE IS NOT BARRED BY RES JUDICATA.

Res judicata does not apply where a judgment or order is void. Allcock v. Allcock, 107 Ill.App.3d 150, 153 (1982). As shown above, the 1984 orders are void because the Bank failed to make Helen A. Dick a party to the aforesaid Counts I-IV.

Furthermore, at least two of the elements of res judicata are missing from the instant matter.

In Leow v. A & B Freight, 175 Ill.2d 176, 180 (1997) the Illinois supreme court explained that for res judicata to bar a subsequent action, all three of the following criteria must be met:

> "(1) there must be a final judgment on the merits rendered by a court of competent jurisdiction; (2) there must be an identity of causes of action; and (3) there must be an identity of parties or their privies."

1.

To date, there has not been a final judgment on the merits in this case that was entered by a court of competent jurisdiction.

(a.)

Judge Baner did not have jurisdiction over all necessary parties when he entered the February 21, 1984 et seq. orders as to the Bank's Counts I-IV.

As set forth above, Helen A. Dick was a necessary party to Counts I-IV of the Bank's 1982-1984 action but the circuit court did not have jurisdiction over her when, e.g., Judge Baner entered the February 21, 1984 order finding inter alia that she was not a party to any of the counts then remaining (i.e., said Counts I-IV). As set forth at paragraph 4 in Section "A" of her 1996 petition to vacate (Vol. XX, C-4225, Appendix page 21):

> "4. An order entered without the presence before the court of all necessary

parties is void and may be attacked at any time (Estate of Steinfeld, 158 Ill.2d 1, 12 (1994)) and is binding only on parties who were then before the court. (Oglesby v. Springfield Marine Bank, 385 Ill. 414, 430 (1944)). The court has the duty to vacate a void order and thus expunge void acts from its records. People v. Magnus, 262 Ill.App.3d 362, 365 (1994)."

As set forth at paragraph 7 (a) of said 1996 petition to vacate:

"[I]t is a plaintiff's duty (in the instant case, the trustee Bank's duty) to see and to know that all necessary parties are before the court or the orders obtained will not be binding. Hopkins v. Roseclare Lead Co., 72 Ill. 373, 378 (1874)."

(b.)

Neither Judge Witte nor Judge Caisley had subject-matter jurisdiction when they (respectively) dismissed Helen A. Dick's January 1994 petition (attempting to vacate only Judge Baner's March 14, 1984 order) and dismissed this June 1996 petition to vacate the February 21, 1984 et seq. orders.

In Federal Sign & Signal v. Czubak, 57 Ill.App.3d 176, 178-179 (1978), the reviewing court found that when considering a petition to vacate, the initial inquiry to be made by a court is whether the judgment is void (and that if it is, successive, even identical, petitions can be used to attack it).

Paragraphs 1 and 7 (c) of this June 1996 petition to vacate (Vol. XX, C-4225 Appendix page 21) read as follows:

"1. * * * It is not appropriate for one circuit judge to review the orders of another circuit judge. People ex rel. v. Samuel B. Epstein, Judge, et al., 61 Ill.2d 229, 230-231 (Supervisory order, 1974).

* * *

7. * * * (c) Helen A. Dick did not know or discover until May 1996, that if, for some reason, a matter involving review of a prior order is assigned to a different judge, that judge should find that he does not have jurisdiction and should transfer the case back to the judge who entered the initial order(s). Cruz v. Columbus-Cuneo-Cabrini Medical Ctr., 194 Ill.App.3d 1037, 1039-1040 (1990) and Cruz , 264 Ill.App.3d 633, 636-637 (1994)."

As set forth at page 5 within the foregoing Statement of the Case, Judge Baner was still sitting as a circuit judge and entered docket orders on June 27, 1996 and August 1, 1996. Pursuant to the foregoing principles of law, both the judge (Judge Witte) who dismissed Helen A. Dick's 1994 attempt to vacate (only) Judge Baner's March 14, 1984 order of dismissal and the judge (Judge Caisley) who dismissed her June 1996 petition to, among other things, vacate all or portions of each of Judge Baner's February 21, 1984 orders---ought to have known that the initial inquiry to be made was as to the validity of Judge Baner's orders and that they did not have subject-matter jurisdiction.

4.

There is not an "identity of causes of action."

As shown above, the Bank fraudulently concealed its liability (as to the Count I-IV causes of action) in ways that created a situation whereby the only way beneficiary Helen A. Dick could litigate any of said causes of action against the Bank---was not only to discover that the Bank was liable for those 1959 et seq. acts---but also to discover that she had a cause of action to vacate each 1982-1984 order and/or finding that had been entered against her interests (including Judge Baner's February 21, 1984 order finding inter alia

that she could not submit facts or present argument as to said Counts I-IV); to be brought in as party plaintiff; and for the Bank to be realigned as party defendant.

Writs of error coram nobis have been abolished in Illinois; a petition to vacate a final order or judgment after 30 days must be filed in the same proceeding in which the order or judgment was entered, but is not a continuation thereof. 735 ILCS 5/2-1401.

The record shows that she pleaded the aforesaid principal cause of action in June 1996 (and not before). Her June 1996 petition to vacate is a pleading "under" 735 ILCS 5/2-1401 (f). (A copy of said June 1996 petition, Vol. XX, C-4225, is at Appendix page 21.)

The appellate court acknowledges that Helen A. Dick's June 1996 pleading is a section 2-1401 petition to vacate. The record shows that her only prior attempt to vacate any 1984 order was filed in January 1994 (Vol. XVII, C-3793; pertinent portions are at Appendix page 43), at which time she was attempting to vacate only the March 14, 1984 order by which Judge Baner had permitted dismissal "per stipulation" between the Bank and George III. Because she was not attempting to vacate the aforesaid February 21, 1984 order as to her lack of standing to submit facts or argument as to the (underlying) Count I-IV causes of action, her January 1994 pleading did not avoid the res judicata effect of said February 1984 order and thus failed to state a cause of action "under" 735 ILCS 5/2-1401 (f).

D.

THE JUNE 1996 PETITION TO VACATE IS NOT BARRED BY LIMITATIONS.

1.

As set forth above, the orders in question are void.

As shown above, the Bank (which holds itself out to the public as worthy to be hired as a trustee)

concealed its liability by insuring that beneficiary Helen A. Dick was denied due process as to Counts I-IV of its 1982-1984 action. The orders obtained by the Bank are void because of the Bank's failure to bring necessary party Helen A. Dick before the court as to said counts. Hopkins v. Roseclare Lead Co. 72 Ill. 373, 378 (1874).

Void orders, judgments or decrees can be attacked at any time without regard to the 2-year limitation period in section 72 (now 735 ILCS 5/2-1401). Application of Dickey, 72 Ill.2d 317, 323 (1978). A void judgment or order may be vacated at any time and neither laches nor estoppel apply. Cash v. Maloney, 402 Ill. 528, 536, 84 N.E.2d 390, 394 (1949).

2.

The principal cause of action (to vacate the February 21, 1984 et seq. orders; for Helen A. Dick to be brought in as party plaintiff; and for the Bank to be re-aligned as party defendant) was fraudulently concealed by the trustee Bank.

As set forth at paragraph 6 of Helen A. Dick's June 1996 petition to vacate (Vol. XX, C-4225, Appendix page 21):

> "6. The trustee Bank's acts in filing and in serving its September 1982 7-count pleading (Vol. I, C-19) were overt acts by which the trustee Bank represented (to the court and to beneficiary Helen A. Dick) that said Helen A. Dick had been made a party to all counts to which she was a necessary party."

The Bank named George F. Dick III as the only defendant to the aforesaid Counts I-IV of its said 1982 pleading, thus fraudulently concealing the Bank's liability for having participated in the 1959 acts set forth in said Counts.

During proceedings on November 28, 1994 (which resulted in the dismissal of Helen A. Dick's 1994

petition, by which she attempted to vacate only the March 14, 1984 order which had permitted dismissal "per stipulation" between the Bank and George III), the Bank's attorney referred to her. saying:

> "The case was never that she had no remedy. The case was that she didn't apparently know what her remedy was ***." (Transcript, Vol. XIV, page 34 at line 5.)

A trustee's failure to disclose amounts to fraudulent concealment. Chicago Park District v. Kenroy, 141 Ill.2d 281, 289 (1990).

In Illinois, an action that has been fraudulently concealed may be commenced at any time within 5 years of discovery of said action. 735 ILCS 5/13-215. (The full text of said statute is at page "vii" above.)

Uncontroverted facts as to when and how Helen A. Dick discovered that she had this cause of action (to vacate, to be joined as a party, and for the Bank to be realigned as a defendant) are set forth at paragraphs 6 and 7 of her June 1996 petition to vacate (Vol. XX, C-4225, Appendix page 21) and quoted at page 7 above, where she has set forth facts as to when and how the federal question of due process was raised in the Illinois courts. Said facts show that she did not know or discover that she had this said cause of action until May 1996. This petition to vacate filed approximately one month later (June 13, 1996) is not barred by limitations.

Furthermore, as set forth in the foregoing Statement of the Case, the trust created by George F. Dick, Jr.'s will was to continue until the death of Eleanor (who died January 12, 1992). The trust created by the 1969 will of Althea M. Dick t/b/o Helen A. Dick is still an express active trust. The Bank's wrongful acts affected not only property of George Jr.'s estate but also

the income available to Althea M. Dick. The statute of limitations does not begin to run against an express active trust until the trust is repudiated or the trust relation between the parties comes to an end. Piff v. Berresheim, 405 Ill. 617, 626, 92 N.E.2d 113, 118 (1950).

III.
SPECIFICALLY AS TO CONVERSION

West's Law and Commercial Dictionary in Five Languages (1985) defines "conversion" as follows:

> Conversion. An unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of the owner's rights. Any unauthorized act which deprives an owner of his property permanently or for an indefinite time. Unauthorized and wrongful exercise of dominion and control over another's personal property, to exclusion of or inconsistent with rights of owner.

From the time of the mid-1972 transfer of Peoples Bank of Bloomington's Capital Stock to the one-bank holding company (Peoples Mid-Illinois Corporation), dividends on the shares in question have paid to the holding company and used (by the holding company and its management) to pay a second level of management (i.e., holding company management); to purchase a second bank in 1985 (First National Bank of Normal) and to acquire an additional one-bank holding company (Lexington Bancshares, Inc.) and its wholly owned subsidiary, Lexington Bank (also a federal bank), in or about January 1993.

In the instant case, transfer of shares which were property of the estate of George F. Dick, Jr. was

not merely "unauthorized," it was specifically prohibited by the Will of George F. Dick, (a will of which the Bank has had actual notice, as set forth above, at all times since September 19, 1955).

Among the documents marked as the Bank's exhibits during the February 22, 1984 pre-trial conference is Plaintiff's Exhibit #7. It is a copy of a page of the Stock Holders Ledger used by the Bank (and, beginning in mid-1972, used by the holding company, Peoples Mid-Illinois Corporation). A copy of said document is at page 82 of the Appendix and bears the words:

"Althea M. Dick, Life Tenant Under Will
of Geo. F. Dick, Jr., Deceased."

A copy of the Ledger page showing shares Althea owned individually (Plaintiff Bank's Exhibit #8) is at Appendix page 83.

A corporation stands in the relation of a fiduciary to its stockholders. Seymour v. National Biscuit Co., 107 F.2d 58, 63 (3d Cir. 1939). A corporation owes a duty to use reasonable diligence in every case to ascertain whether a requested transfer of stock is duly authorized to be made. Seymour, at 62.

The United States Supreme Court should decide the question of whether the transfer of shares of the Capital Stock of the Bank to the use and beneficial enjoyment of the bank holding company is, as Helen A. Dick alleges, wrongful conversion.

Respectfully submitted,

Helen A. Dick

Helen A. Dick, pro se
3323 - 13th Ave. Court
Moline, Illinois 61265

Supreme Court, U.S.
FILED

97 1110 DEC 30 1997

No. _____ OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1997

PEOPLES BANK OF BLOOMINGTON,
as Successor Trustee of trusts created by the
Will of George F. Dick, Jr., deceased,
and as Trustee of trusts created by the
Will of Althea M. Dick, deceased,
Plaintiff,
v.
GEORGE F. DICK III, et al., Defendants;

HELEN A. DICK,
Petitioner-Appellant,

v.

PEOPLES BANK OF BLOOMINGTON,
Respondent-Appellee.

On Petition for a Writ of Certiorari to the
Appellate Court of Illinois, Fourth District

SEPARATE APPENDIX
(to Petition for Writ of Certiorari)

Helen A. Dick, pro se
3323 - 13th Ave. Court
Moline, Illinois 61265
Phone: (309) 762-7014

109 pp

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Certain of the Plaintiff Bank's exhibits marked for identification during the pre-trial conference held February 22, 1984:

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Appendix

No. 4-96-0770
IN THE APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,
Plaintiff
v.
GEORGE F. DICK III, et al,
Defendants,
HELEN A. DICK,
Petitioner-Appellant,
v.
PEOPLES BANK OF BLOOMINGTON,
Respondent-Appellee

Appeal from Circuit Court of McLean County No. 82-CH-124

Honorable William T. Caisley, Judge Presiding

ORDER
[filed April 16, 1997]

This is the seventh appeal of petitioner Helen A. Dick to this court. See Peoples Bank v. Dick, 135 Ill. App. 3d 1170, 496 N.E.2d 1279 (1985) (unpublished order under Supreme Court Rule 23); Dick v. Dick, 169 Ill. App. 3d 1175, 540 N.E.2d 583 (1988) (unpublished order under Supreme Court Rule 23); In re Estate of Dick, 187 Ill. App. 3d 77, 543 N.E.2d 339 (1989); Dick v. Peoples Mid-Illinois Corp., 195 Ill. App. 3d 654, 552 N.E.2d 385 (1990); Dick v. Peoples Mid-Illinois Corp., 242 Ill. App. 3d 297, 609 N.E.2d 997 (1993); Peoples Bank v. Dick, No. 4-94-1069 (March 15, 19950 (order of dismissal). Each of these prior appeals have attempted

to relitigate matters related to the estates of George F. Dick, Jr., and Althea M. Dick, petitioner's adoptive parents, and the actions or omissions of George F. Dick III (George III) and Peoples Bank of Bloomington (Bank), trustee and successor trustee, respectively, of trusts created under those estates.

Petitioner's latest appeal is from the trial court's dismissal, pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 1994)), of her section 2-1401 petition to vacate as to her interests (735 ILCS 5/2-1401 (West 19940), orders entered in 1984 in settlement of a 1982 action by the Bank, as successor trustee, against George III. Petitioner also appeals the assessment against her of $300 in attorney fees and the entry of a permanent injunction barring her from initiating litigation of matters that had been or could have been litigated in prior proceedings. Taken with the case is the Bank's motion for sanctions pursuant to Supreme Court Rule 375 (b). 155 Ill. 2d R. 375 (b).

The June 1996 petition to vacate alleges that the 1984 orders are void as to petitioner because she was a necessary party due to the Bank's failure to represent her interests and "facts" the Bank failed to present to the court during the 1982 proceeding. The record indicates that in 1994 petitioner filed a similar petition requesting, inter alia, that the 1984 order be vacated because she was a necessary party, the settlement agreement be found to be void, and the petition be deemed a timely filed counterclaim in the 1982 action. The trial court denied the petition and granted the Bank's motion for dismissal pursuant to sections 2-619(a)(4) and (a)(5) of the Code. 735 ILCS 5/2-619(a)(4), (a)(5) (West 19940. Those orders on the 1994 petition became final when petitioner failed to properly perfect her appeal and it was dismissed by this court. Peoples Bank, No. 4-94-1069 (March 15, 1995) (order of dismissal).

Res judicata will bar a subsequent cause of

action between the same parties on the same claim as to all matters and defenses actually raised as well as matters and defenses that could have been raised in the original action. Housing Authority v. Young Men's Christian Ass'n, 101 Ill.2d 246, 252-53, 461 N.E.2d 959, 961-62 (1984). The test for identity of causes of action is whether they are based on a common core of operative facts such that the evidence necessary to sustain the second verdict would have sustained the first. Redfern v. Sullivan, 111 Ill.App.3d 372, 376, 444 N.E.2d 205, 208 (1982). The operative facts upon which petitioner relies and the relief she seeks are the same as those presented and decided adversely to her in her prior two proceedings, as well as in the 1984 proceeding in which she appealed the dismissal of her counterclaim against George III.

Through the long course of the various proceedings initiated by petitioner, the common theme that emerges is petitioner's unwillingness to accept the finality of the 1984 orders by continuously seeking adjudication of issues that were or could have been raised more than a decade ago and are either untimely or barred by the doctrine of res judicata. This court has previously noted petitioner's recalcitrance and has suggested or imposed injunctive relief. See Estate of Dick, 187 Ill.App.3d at 78, 543 N.E.2d at 340 (the present proceedings are an attempt to sidestep our previous decisions and sanctions or injunctive relief might be appropriate); Dick, 195 Ill.App.3d at 659, 552 N.E.2d at 389 petitioner is barred from relitigating any issue regarding the impropriety of the settlement between the Bank and George III); Dick, 242 Ill.App.3d at 305, 609 N.E.2d at 1003 (petitioner barred from bringing a cause of action regarding the Bank's failure to disclose the circumstances surrounding the settlement agreement and its effect upon her). The instant action is more of the same unwarranted

challenge to issues that have long been foreclosed. Petitioner submits no argument relative to the order imposing attorney fees and an injunction against her other than noting that it is "unjust." More- over, her claim that the trial judge should have referred the case to Judge Baner, who apparently entered the original 1984 orders and entered preliminary orders directed to correction of typographical errors in the section 2-1401 pleadings in this case, is unsupported by cogent argument or any applicable legal authority supporting her claim of error. Both issues are, therefore, waived. See 155 Ill.2d R. 341 (e)(7); County of Cook v. Renaissance Arcade & Bookstore, 122 Ill.2d 123, 145, 522 N.E.2d 73, 82 (1988).

Taken with the case is the Bank's motion for sanctions pursuant to Rule 375 (b) for pursuit of a frivolous appeal. A party who successfully defends a trial court's aware of sanctions or attorney fees should not be forced to bear the costs of defending the award on appeal. Kubiak v. City of Kewanee, 228 Ill.App.3d 605, 608, 592 N.E.2d 1200, 1202 (1992). It would have been readily apparent to a reasonable, prudent attorney that the instant appeal could not be brought in good faith as it is absolutely lacking in any legal basis. Petitioner's pro se status does not exempt her from compliance with the supreme court rules for appellate practice. Therefore, the Bank's motion for sanctions is granted. This cause is remanded to the trial court for a hearing to determine the amount of reasonable attorney fees and costs incurred by the Bank in connection with this frivolous appeal. See Kubiak, 228 Ill.App.3d at 608, 592 N.E.2d at 1203; Aroonsakul v. Flanagan, 155 Ill.App.3d 223, 230, 507 N.E.2d 1, 6 (1987).

The judgment of the circuit court is affirmed, the Bank's motion for sanctions is allowed, and the cause is remanded for determination of the amount of fees and costs of this appeal.

Affirmed; cause remanded with directions.

McCULLOUGH, J., with STEIGMANN, P.J., and COOK, J., concurring.

Appendix

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,
Plaintiff,
v.
GEORGE F. DICK III, et al.,
Defendants.

No. 82-CH-124

JUDGMENT ORDER
[entered September 11, 1996
by Circuit Judge William T. Caisley
Vol. XX, C-4355]

On August 30, 1996, Peoples Bank of Bloomington, Plaintiff/Respondent herein, appears by its counsel of record, John E. Fick, and its Officer/Vice President, David W. Wilson. There also appears pro se Helen A. Dick, Defendant/Petitioner. Whereupon hearings are held on pending matters of the parties. The matters heard are the Motion of Peoples Bank for Involuntary Dismissal - 735 ILCS 5/2-619; Peoples Bank's Motion for Attorney's Fees - Supreme Court Rule 137; and Peoples Bank's Motion for Injunctive Orders permanently barring Helen A. Dick from initiating litigation of matters previously adjudicated to judgment. The court considers said Motions together with petitioner Helen A. Dick's pleadings and Affidavits opposing said relief, and the court considers all the arguments of the parties and being fully informed in the

premises FINDS that Peoples Bank's Motion for Involuntary Dismissal - 735 ILCS 5/2-619 of Helen A. Dick's Verified Petition to Vacate (as to Helen A. Dick's Interests) Orders Which were and are Void Because of the Trustee Bank's Failure to see that All Necessary Parties were Before the Court as to Counts I, II, III and IV should be and is ALLOWED.

Further, the Court FINDS the Motion of the Peoples Bank for Attorney's Fees for violation by Helen A. Dick of Supreme Court Rule 137 should be and is ALLOWED in the amount of $300.

Further, the Court FINDS that Helen A. Dick should be and is PERMANENTLY ENJOINED and barred from initiating litigation against Peoples Bank of Bloomington or its successors in interests, or George F. Dick III, his heirs and assigns, involving matters which have heretofore been litigated or could have been litigated in this or any related proceeding.

WHEREFORE, BE IT ORDERED:

A. Defendant/Petitioner Helen A. Dick's Verified Petition to Vacate (as to Helen A. Dick's Interests) Orders Which were and are Void Because of the Trustee Bank's Failure to See that all Necessary Parties were Before the Court as to Counts I, II, III and IV [,] filed herein on June 13, 1996 is DISMISSED WITH PREJUDICE; and

B. Helen A. Dick is assessed $300.00 payable to Peoples Bank for violation of Supreme Court Rule 137; and

C. Helen A. Dick is permanently enjoined from initiating litigation against Peoples Bank of Bloomington, or its successors in interest, or George F. Dick III, his heirs and assigns, of any matters which heretofore have been litigated or could have been litigated in this or any other related proceeding.

DATED: September 11, 1996.

WILLIAM T. CAISLEY, Circuit Judge

DOCKET ORDER
[entered August 30, 1996
by Circuit Judge William T. Caisley,
Vol. I, C-17 E]

Now come Commerce Bank, corporate successor to the Peoples Bank of Bloomington, as successor trustee of the trust established by the Last Will and Testament of Althea M. Dick, deceased, by counsel John E. Fick and Helen A. Dick in person pro se into open court, and this cause has come on for hearing upon the motion of the plaintiff to dismiss the petition of Helen A. Dick pursuant to §2-619 of the Code of Civil Procedure. The court found that all of the issues raised in the verified petition filed by Helen A. Dick on June 13, 1996 are issues which have heretofore been determined by this court and by the Fourth District Appellate Court; that the judgments of this court and of the Fourth District Appellate Court are not void and that this court and the Fourth District Appellate Court had jurisdiction to hear and determine the issues raised therein; and that the petition filed June 13, 1996 is an impermissible collateral attack upon a final judgment. The court further found that the filing of a petition to vacate on June 13, 1996 has caused the Commerce Bank, as corporate successor of the Peoples Bank of Bloomington, to incur attorneys fees and that the bank should be made whole by the petitioner, Helen A. Dick for $300 in attorneys fees incurred in bringing this motion.

The court further found that the repeated filings of collateral attacks upon the final judgments of this court are vexatious; that they cause the trustee to incur expense in defending against such attacks and that they occupy the time of the court which could be devoted to the administration of justice in other causes.

IT IS THEREFORE ORDERED that the petition to vacate filed June 13, 1996 be dismissed with prejudice; that the trustee have judgment against Helen A. Dick in the sum of $300 for attorneys fees incurred by the trustees in defending against the petition; and that the petitioner Helen A. Dick be enjoined from commencing further collateral attacks upon the judgment of this court and the Fourth District Appellate Court with respect to the trust created by the Last Will and Testament of George F. Dick, Jr. and the Last Will and Testament of Althea M. Dick and the administration thereof prior to January 1, 1996. A written order was to be submitted. W.T.C.

DOCKET ORDER
[entered August 1, 1996
by Circuit Judge Richard M. Baner
Vol. I, C-17 D]

THE MOTION OF HELEN A. DICK FOR LEAVE TO CORRECT TYPOGRAPHICAL ERRORS IS GRANTED. THE COURT NOTES THAT THE REQUESTED SPECIFICATION HAS BEEN FILED. THE MOTION FILED BY THE DEFENDANT PEOPLES BANK FILED JULY 15TH 1996 IS NOT A MOTION FOR RECONSIDERATION BY THIS COURT AND THEREFORE MUST BE RULED UPON BY WHATEVER JUDGE IS CURRENTLY RESPONSIBLE FOR THIS CAUSE. ONCE THE DEFENDANTS MOTION HAS BEEN RULED UPON, THIS COURT WILL SCHEDULE A HEARING ON THE RECONSIDERATION ISSUE OF THAT IS STILL AN APPROPRIATE ISSUE FOR HEARING. THIS CAUSE IS REFERRED BACK TO THE McLEAN COUNTY SUPERVISING JUDGE FOR THE CIVIL DIVISION CLERK TO NOTIFY HELEN A. DICK AND ATTORNEY FICK OF THIS ORDER.

Appendix

DOCKET ORDER
[entered June 27, 1996
by Circuit Judge Richard M. Baner,
Vol. I, C-17 B]

This court has reviewed the verified petition filed on June 13, 1996. In order to determine whether it is a motion which must be considered in whole or in part by this court it must first be determined what specific order or orders are the subject of the petition. Therefor, before a hearing date is scheduled before this court the petitioner is ordered to specify in writing, within 30 days, the date of each order challenged as void. This specification shall not contain any argument. The petitioner is further ordered to serve a copy of that specification on all necessary parties to this proceeding along with a copy of the complete petition filed June 13, 1996, if that has not already been done. Clerk to notify petitioner and counsel regarding this docket order. P/F/R [Pull For Review] 7/28/96

IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON,
As Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,
Plaintiff,
v.
GEORGE F. DICK III, et al.,
Defendants.

No. 82-CH-124

JUDGMENT ORDER
[entered September 26, 1994
by Circuit Judge W. Charles Witte
Vol. XVIII, C-4083]

On September 1, 1994, Peoples Bank of Bloomington, Plaintiff/Respondent herein appears by its counsel of record, John E. Fick, and its Trust Officer and personal representative, Owen Mair. There also appears pro se Helen A. Dick, Defendant/Petitioner. Whereupon hearings are held on pending matters of the parties. The first matter heard is the Verified Petition for Change of Venue to Woodford County of Helen A. Dick, Defendant/Petitioner. The Court considers said Verified Petition for Change of Venue and also the Memo of Helen A. Dick submitted in support thereof, together with the arguments of the parties, and being fully informed in the premises the Court FINDS that the Verified Petition for Change of Venue to Woodford County of Helen A. Dick, Defendant/Petitioner, should be and is denied.

WHEREFORE, the Verified Petition for Change of Venue to Woodford County of Helen A. Dick, Defendant/Petitioner is denied.

Next, on the lst day of September 1994, there comes on for hearing the Motion for Involuntary Dismissal - 735 ILCS 5/2-619(a)(4)(5) and Motion for Attorneys Fees - Supreme Court Rule 137 of Peoples Bank of Bloomington, Plaintiff/Respondent, and the Court considers said Motions together with Petitioner Helen A. Dick's written Opposition to Peoples Bank's Motion for Involuntary Dismissal as well as Petitioner Helen A. Dick's Motion for Sanctions under Supreme Court Rule 137 and further, the Court considers all the arguments of the parties and being fully informed in the premises FINDS that the Motion for Involuntary Dismissal - 735 ILCS 5/2-619(a)(4)(5) of Peoples Bank should be and is allowed.

WHEREFORE, the Motion for Involuntary Dismissal - 735 ILCS 5/2-619(a)(4)(5) of Peoples Bank, Respondent, is allowed, and the Verified Petition of Helen A. Dick, Defendant/Petitioner, to vacate Order(s) Obtained by Fraud Upon the Court is hereby denied and judgment is entered herein in favor of Peoples Bank of Bloomington, Plaintiff/Respondent, and against Helen A. Dick, Defendant/Petitioner.

This Court retains jurisdiction limited to a consideration of the Peoples Bank of Bloomington's Motion for Attorneys Fees - Supreme Court Rule 137. The Court directs Peoples Bank to support its Motion by documentation of any costs and attorneys fees claimed reasonably to have been incurred by Peoples Bank in defending against the Petitions of Helen A. Dick filed herein. Within seven (7) days of receipt of such documentation from Peoples Bank, Helen A. Dick, Defendant/Petitioner, may make any response she sees fit. Thereafter, the Court will determine whether further hearing should be held or it may find that the

issues made in said Motion of Peoples Bank for relief under Rule 137 should be determined on the record then and there established by the parties, and shall act accordingly.

DATED: September 26, 1994

W. CHARLES WITTE, Circuit Judge

IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON,
As Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,
Plaintiff,
v.
GEORGE F. DICK III, et al.,
Defendants.

No. 82-CH-124

STIPULATION
[filed March 14, 1984,
Vol. VII, C-1617]

NOW COME PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and the Will of Althea M. Dick, deceased, plaintiff-counterdefendant, by Samuels, Miller, Schroeder, Jackson & Sly, its attorneys, and GEORGE F. DICK III, defendant-counterplaintiff, by Albert H. Hoopes and Tenney, Tietz & Heavner, his attorneys, and hereby stipulate that the claims and causes of actions [sic] and counterclaims of said parties now pending in this cause have been fully compromised and settled and, therefore, this cause should be dismissed as to these parties with prejudice.

PEOPLES BANK OF BLOOMINGTON,
as Successor Trustee of trusts
created by the Will of George F.
Dick, Jr., deceased, and

as Trustee of trusts created by the Will of Althea M. Dick, deceased,

By SAMUELS, MILLER, SCHROEDER, JACKSON & SLY, Its Attorneys

GEORGE F. DICK III, by his attorneys, Albert H. Hoopes, and TENNEY, TIETZ & HEAVNER

* * * * * *

ORDER

THIS CAUSE comes on for hearing on the Stipulation of PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Wills of George F. Dick, Jr., deceased, and Althea M. Dick, deceased, by Samuels, Miller, Schroeder, Jackson & Sly, its attorneys, and GEORGE F. DICK III, by Albert H. Hoopes and Tenney, Tietz & Heavner, his attorneys. The Court is fully informed in the premises; therefore,

IT IS ORDERED that the above and foregoing cause as to all pending counts involving causes of actions, claims or counterclaims by and between the parties to the said Stipulation be dismissed with prejudice, each said party to pay its or his own costs; costs are paid.

DATED this 14th day of March, 1984.

RICHARD M. BANER, Judge

IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON,
As Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,
Plaintiff,
v.
GEORGE F. DICK III, et al.,
Defendants.

No. 82-CH-124

ORDER
[Entered March 2, 1984
by Circuit Judge Richard M. Baner,
Vol. VII, C-1583]

Count I

As to Count I the Court finds that a distribution of the remainder interest of "Peoples Bank" shares effective on the date of death of Althea M. Dick (October 10, 1976) should have been in the amount of 2,400 shares. I further find that any assignment of interest in shares by Althea Dick prior to her death was violative of the limiting provisions of the Will of George F. Dick, Jr. Summary Judgment is therefore entered in favor of the defendant as to the issue of remainder distribution of principal. Summary Judgment is entered in favor of the plaintiff as to the issue of assignment. The defenses of res adjudicata, estoppel, laches or statute of limitation[s] are not established.

Appendix

The prayer for accounting is allowed as it relates to the period of March 31, 1959 to October 10, 1976 and as to all shares during such period. Ruling is reserved as to remaining issues.

Count II

Both motions for Summary Judgment are denied.

Count III

Motion of plaintiff for Partial Summary Judgment is denied except as to a partial judgment and/or finding that the plaintiff has established a prima facie case that a breach of trust by the defendant has occurred. The burden of proof has now shifted to the defendant (See Illinois Evidence Manual, Gard, Section 5:11). To the extent the motion seeks additional relief it is denied. To the extent they relate to the above finding the defenses of laches, Chapter 17, Section 1684(2) and res adjudicata are not established.

Count IV

I find that under the peculiar facts of this cause, to the extent they are now before the Court, the plaintiff is not bound under res adjudicata by the final discharge order in the Estate of Althea Dick. I note particularly the corporate responsibility and position of the defendant at relevant times.

The motion of the defendant for Summary Judgment is denied. The defenses of laches and res adjudicata are not established.

The motion of the plaintiff for Partial Summary Judgment is denied except as to a Partial Judgment and/or finding that the transaction described appears on

its face to be other than at arms length and for a purpose which was not in the best interest of the trust. The burden of proof therefore has shifted to the defendant. To the extent the motion seeks other relief it is denied.

ENTERED: March 2, 1984

Richard M. Baner, Circuit Judge

IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON,
As Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,
Plaintiff,
v.
GEORGE F. DICK III, et al.,
Defendants.

No. 82-CH-124

ORDER
[Vol. VII, C-1564]

1. February 15, 1984 defendant Helen A. Dick files Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment and Affidavit in Opposition to George F. Dick III's Motion for Summary Judgment

2. Objection by George F. Dick, III to standing of Helen A. Dick to argue Motions for Summary Judgment on Counts I, II, III and IV of the Complaint entitled Construction of Testamentary Trusts herein filed by the original plaintiff.

3. Arguments heard.

4. The Court finds Helen A. Dick is not a party to the causes of action alleged by the original plaintiff in said Counts I, II, III and IV, and in the absence of agreement of the parties to said counts may not independently submit factual matters or present argument relative to pending Summary Judgment Motions.

ENTERED: February 21, 1984
Richard M. Baner, Circuit Judge

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON,
as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,
Plaintiff,
v.
GEORGE F. DICK III, et al.,
Defendants.

No. 82-CH-124

VERIFIED PETITION TO VACATE
(AS TO HELEN A. DICK'S INTERESTS)
ORDERS WHICH WERE AND ARE VOID
BECAUSE OF THE TRUSTEE BANK'S FAILURE
TO SEE THAT ALL NECESSARY PARTIES
WERE BEFORE THE COURT
AS TO COUNTS I, II, III AND IV
[filed June 13, 1996, Vol. XX, C-4225]

Trust beneficiary Helen A. Dick, pro se, brings this petition pursuant to 735 ILCS 5/2-1401 (f); incorporates her supporting affidavit (Exhibit "A" attached hereto); and states as follows;

A.
IN GENERAL

1. The record should be transmitted to Eleventh Judicial Circuit Judge Richard M. Baner, the judge who entered the orders in question. It is not appropriate for one circuit judge to review the orders of another circuit

judge. People v. Samuel B. Epstein, Judge, et al. (Supervisory order entered July 15, 1974) 61 Ill.2d 229, 230-231.

2. A prior and quite different petition (filed January 11, 1994, Vol. [XVII], C-3793, was based on the limited knowledge beneficiary Helen A. Dick had at the time. It was not heard on the merits.

3. The principle of caveat emptor does not apply to fiduciary relationships. The trustee must not only be truthful in all his representations, he must not remain silent concerning any matter that would throw light on the trust estate. 90 C.J.S. Trusts § 247, p. 240. The beneficiaries must not only have been acquainted with the facts, they must know of their rights and have been apprised of the law, and of how the facts would be dealt with by a court of equity. 76 Am Jur 2d Trusts, § 357, p. 359. A trustee's failure to disclose amounts to fraudulent concealment. Chicago Park District v. Kenroy (1980) 78 Ill.2d 555, 562.

4. An order entered without the presence before the court of all necessary parties is void (Estate of Steinfeld (1994) 158 Ill.2d 1, 12) and is binding only on parties who were then before the court (Oglesby v. Springfield Marine Bank (1944) 385 Ill. 414, 430). The court has the duty to vacate a void order and thus expunge void acts from its records. People v. Magnus (1st Dist. 1994) 262 Ill.App.3d 362, 365.

5. Laches and limitations do not apply to express active trusts. Piff v. Berresheim (1950) 405 Ill. 617, 624. Void orders, judgments or decrees can be attacked at any time without regard to the 2-year limitation period in section 72 (now 735 ILCS 5/2-1401). Application of Dickey (1978) 72 Ill.2d 317, 323. Where relief is sought from a void judgment, section 2-1401, by its express language, does not limit such relief and a petitioner is not required to allege due diligence. Marriage of Fox (4th Dist. 1989) 191 Ill.App.3d 514, 520.

6. The trustee Bank's acts in filing and in serving its September 1982 7-count pleading (Vol. I, C-19) were overt acts by which the trustee Bank represented (to the court and to beneficiary Helen A. Dick) that said Helen A. Dick had been made a party to all counts to which she was a necessary party.

7. As set forth in her supporting affidavit (Exhibit "A" attached hereto):

(a) Helen A. Dick did not know or discover until October 1995 (while preparing a petition for leave to appeal to the Illinois Supreme Court) that it is a plaintiff's duty (in the instant case, the trustee Bank's duty) to see and to know that all necessary parties are before the court or the orders obtained will not be binding. Hopkins v. Roseclare Lead Co. (1874) 72 Ill. 373, 378.

(b) Helen A. Dick did not know or discover until preparing a petition for writ of certiorari, in December 1995, that due process requires more than merely being served with a pleading. Due process requires an opportunity to be heard at a meaningful time and in a meaningful manner. U.S. Const. Amend. 14. Logan v. Zimmerman Brush Co. (1982) 455 U.S. 422, 71 L.Ed.2d 265, 279. Illinois Const. of 1970, Art. I, sec. 2.

(c) Helen A. Dick did not know or discover until May 1996, that if, for some reason, a matter involving review of a prior order is assigned to a different judge, that judge should find that he does not have jurisdiction and should transfer the case back to the judge who entered the initial order(s). Cruz v. Columbus-Cuneo-Cabrini M. Ctr. (lst Dist. 1990) 194 Ill.App.3d 1037, 1039-1040 and Cruz (lst Dist. 1994) 264 Ill.App.3d 633, 636-637.

(d) Helen A. Dick did not know or discover until May 1996, that each order entered as to Counts I, II, III and IV of the Bank's 1982-1984 action is void for the following reasons. Facts which were not before Judge Baner would, had they been before him, have revealed that each said count involved a controversy between the trustee Bank and the beneficiaries (including Helen A. Dick). Although a trustee may ordinarily represent the interests of beneficiaries, the beneficiary is a necessary party if a complete determination of the controversy cannot be had unless he is made a party, as where a suit involves a controversy between the trustee and the beneficiaries. Restatement of Trusts 2d (1959) Ch. 9 § 280 (i). The requirement of joinder of necessary parties is absolute and inflexible. Adoption of Ledbetter (4th Dist. 1984) 125 Ill.App.3d 306, 308. If the lack of parties is brought to the attention of the court, whether one of original or appellate jurisdiction, the court should not proceed further in the matter until the omission has been corrected, even though no objection is made by any party litigant. Giese v. Terry (1943) 382 Ill. 34, 41.

B.
AS TO THE ASSIGNMENT OF JUDGE BANER OF WOODFORD COUNTY AND ORDERS ENTERED BY SAID JUDGE BANER

1. McLean County Judge James A. Knecht recused himself on November 1, 1982, and referred the matter to the then Chief Judge for reassignment. McLean County Judge Keith E. Campbell was assigned to this case on or about November 10, 1982, and

disqualified himself on April 14, 1983.

2. On or about April 15, 1983, Circuit Judge Richard M. Baner, of Woodford County, was assigned to this case. All parties (including Helen A. Dick, who was a party to the Bank's Count VI, a count for discovery) accepted said non-McLean County judge as an impartial judge. It was he (Judge Baner) who entered the orders which beneficiary Helen A. Dick alleges are void because said orders were entered without the presence before the court of all necessary parties (including said Helen A. Dick).

3. Judge Baner's February 15, 1984 Record Sheet entry included his statement that material Helen A. Dick had filed that day was "now moot" due to the trustee Bank's voluntary dismissal of its aforesaid Count VI. Counts V and VII of the Bank's 7-count complaint had been dismissed by Judge Campbell on January 18, 1983.

4. On February 21, 1984, Judge Baner entered an order (Vol. [VII] C-1564) finding, among other things, that Helen A. Dick was not a party to any of the counts then remaining (Counts I, II, III and IV) and that she was not permitted to independently submit factual matters or present argument as to pending Summary Judgment Motions.

5. On March 2, 1984, Judge Baner entered an order (Vol. [VII], C-1583) as to some of the substantial issues. As to Count I, it was determined by Judge Baner that the transfer of shares to George F. Dick III prior to Althea M. Dick's death violated the provisions of the Will of George F. Dick, Jr. Said order directed George III to account for all shares from March 31, 1959, the date of the transfer of shares to George III, through October 10, 1976, the day of Althea's death. Neither of the parties (i.e. the Bank and George III) appealed from said order.

6. On March 14, 1984, the date that had been

scheduled (Record Sheet entry of November 2, 1983, at # 11) for a two-day bench trial to begin, counsel for the Bank and for George F. Dick III presented a dismissal stipulation to Judge Baner "re pending issues" (Record Sheet entry of March 14, 1984) and Judge Baner entered the Order attached to said stipulation (Vol. [VII], C-1617-1618).

7. Through no fault or negligence on the part of beneficiary Helen A. Dick, the aforesaid 1984 orders were erroneously entered, are void, and should be set aside and vacated (in whole or in part) as to her interests. Said orders were entered through errors of fact not appearing on the record then before Judge Baner and which, had such facts been before the court, would have prevented the court from entering said orders. If the lack of parties is brought to the attention of the court, the court will not proceed further until the omission has been corrected. Giese v. Terry (1943) 382 Ill. 34, 41.

C.

THE FOLLOWING MATTERS OF FACT WERE NOT BEFORE THE COURT IN THE BANK'S ACTION. SUCH FACTS, HAD THEY BEEN BEFORE THE COURT, WOULD HAVE PREVENTED THE ENTRY OF THE AFORESAID 1984 ORDERS BY SHOWING THAT COUNTS I, II, III AND IV EACH INVOLVED A CONTROVERSY BETWEEN THE TRUSTEE BANK AND THE BENEFICIARIES (INCLUDING HELEN A. DICK).

1. The numbered exhibits referred to hereinafter are exhibits marked during the February 22, 1984 pre-trial conference. Said exhibits were not before the court for Judge Baner's consideration during the Bank's action. However, the actual exhibits (bearing the stickers affixed thereto by Judge Baner's court reporter,

Linda Jennings) became a supplement to the record (Record Sheet entry of May 30, 1985) when Helen A. Dick appealed the dismissal of a counterclaim she had filed against George F. Dick III. Said exhibits are within Volumes [XV and XVI] beginning at C-3133.

2. Exhibit #6 (C-3228) consists of one copy each of the face and back of Stock Certificate No. 634, representing 80 shares of the Capital Stock of the Peoples Bank of Bloomington registered (on September 19, 1955) as follows: "Althea M. Dick, Life Tenant Under Will of Geo. F. Dick, Jr., Deceased." Exhibit #7 (C-3229) is a copy of the Stock Holders Ledger page showing the stock shares registered (beginning September 19, 1955) to "Althea M. Dick, Life Tenant Under Will of Geo. F. Dick, Jr., Deceased." Said Exhibits show that at all times after September 19, 1955, the Bank and (after its formation in or about 1972) Peoples Mid-Illinois Corporation (the one-bank holding company had actual notice of the Will of George F. Dick, Jr. Notice of a will gives a corporation, when asked to transfer shares of its stock, the duty to inquire into said will and the duty to refuse to effect any transfer, payment and/or delivery of shares (and any subsequent transfer, payment and/or delivery of shares) that is violative of the terms and provisions of said will. Seymour v. National Biscuit Co. (3d Cir. 1939) 107 F.2d 58, 62. Daily v. Universal Oil Products Co. (N.D. Ill. 1947) 76 F.Supp. 349, 371.

3. Exhibits #8 (C-3230), #11 (C-3240), #25 (C-3510) and #26 (C-3511) are copies of Stock Holders Ledger pages (said ledger being that used by the Bank and, beginning in mid-1972, Peoples Mid-Illinois Corporation) showing shares registered to Althea M. Dick (individually); to Helen Dick (who is not the same person as petitioner Helen A. Dick); to George F. Dick III (beginning November 30, thus during the lifetime of Althea M. Dick, who died October 10, 1976) purportedly

as "Trustee U/W Estate of George F. Dick, Jr., Deceased"; to George III's then wife Marilyn; and to George F. Dick III individually. Said ledger pages show, among others, the various transfers, payments and/or deliveries of shares set forth in the Bank's Counts I, II and IV, including but not limited to the March 31, 1959 transfer of 80 shares to George F. Dick III which Judge Baner found (Order entered March 2, 1984, Vol. [VII], C-1583) was violative of the limiting provisions of the Will of George F. Dick, Jr. A copy of said will is the Bank's Exhibit #1A (Vol. [XV], C-3133).

4. Although the Bank did not use the correct first page for its Exhibit #15, the Bank's Exhibits #16, #15 and #14 (Vol. [XV], C-3268, C-3266 and C-3263) are, respectively: (a) George III's "RESOLUTION TO BE ADOPTED BY BOARD"; (b) Minutes of the June 12, 1967 regular meeting of the Bank's directors (i.e. the meeting referred to in said Exhibits #16 and #14); and (c) Minutes of the July 24, 1967 special stockholders meeting. Said Exhibits show, among other things, that George III personally proposed his said resolution in June and moved, in July, for the unanimous adoption (and voted all 90 shares registered in his name) of said resolution for the 30 for 1 stock dividend and split which took place in 1967. The aforesaid Stock Holders Ledger pages show that the Bank transferred, paid and/or delivered all of the resulting (i.e. 2,700) shares to George F. Dick III and his then wife Marilyn.

5. The foregoing facts, had they been before the court during the Bank's 1982-1984 action, would have shown the court that the interests of the Bank and defendant George F. Dick III were identical (and in conflict with interests of the beneficiaries, including Helen A. Dick) as to the aforesaid 1959 and 1967 transfers, payments and/or deliveries of shares which the Bank effected despite the aforesaid notice of the Will of George F. Dick, Jr.

6. Each of the aforesaid Stock Holders Ledger pages bearing any 1972 entry also bears the words;

"PBB SHARES CONVERTED TO
PEOPLES MID-ILLINOIS CORP."

thus showing that all shares of the Capital Stock of the Peoples Bank of Bloomington (and its Stock Holders Ledger), including but not limited to shares which were property of the estate of George F. Dick, Jr. (e.g., the shares then still registered to Althea as life tenant and 2,400 of the shares registered to George III) were converted on or about June 30, 1972 and/or July 3, 1972 to the use and beneficial enjoyment of said Peoples Mid-Illinois Corporation.

7. As set forth in Helen A. Dick's affidavit (Exhibit "A" hereto), George F. Dick III (who died November 20, 1992) was a director of Peoples Mid-Illinois Corporation in January 1972 (if not before) and never resigned as a director of said holding company. George III thus was both a director of the Bank and a director of the one-bank holding company at the time of the aforesaid mid-1972 conversion.

8. The foregoing facts, had they been before the court during the Bank's 1982-1984 action, would have shown the court: (a) that the trustee Bank was not independent from defendant George F. Dick III because he was still a director of the one-bank holding company which governed the Bank's affairs; (b) that Counts I, II and IV each involved a conflict between the interests of the beneficiaries (including Helen A. Dick) and the interests of the Bank and/or said one-bank holding company.

9. When Judge Baner entered the aforesaid March 2, 1983 Order (Vol. [VII], C-1583) finding that any transfer of interest in shares prior to Althea's death was violative of the provisions of the Will of George F. Dick, Jr. and finding that George F. Dick III should account for all shares for the period March 31, 1959 to

the October 10, 1976 date of Althea M. Dick's death, there were no facts before the court to show that such findings were (although in favor of the interests of beneficiaries) against the interests of the Bank and/or Peoples Mid-Illinois Corporation: (a) as to the March 31, 1959 and subsequent (e.g. 1967) transfers, payments and/or deliveries of shares during Althea's lifetime, including but not limited to the aforesaid 1972 conversion; (b) as to any other benefits George F. Dick III obtained by having such shares registered in his name during Althea's lifetime.

10. When Judge Baner entered that portion of his March 2, 1984 Order (Vol. [VII], C-1583) finding that defendant George F. Dick III should have received 2,400 "Peoples Bank" shares when Althea M. Dick died (October 10, 1976), the aforesaid facts and/or Exhibits were not before the court. A constructive trust will be imposed to prevent a person holding title to property to profit from his wrong or be unjustly enriched by retaining the property. Sadacca v. Monhart (lst Dist. 1984) 128 Ill.App.3d 250, 255.

11. The Bank's Exhibit #10 (Vol. [XV], C-3233) pertains to Count III of the Bank's pleading (Vol. I, C-19) and consists of four statements of accounts in the Peoples Bank of Bloomington:

(a) A statement dated January 6, 1971 of account #278-629, "Geo. F. Dick, Jr. Estate c/o Geo. F. Dick III"

(b) A statement dated June 30, 1971 of account #140-177, "Geo. F. Dick Jr. Estate, Geo. F. Dick III Trustee"

(c) A statement dated December 31, 1973 of account #140-177, "Geo. F. Dick Jr. Estate, Geo. F. Dick III Trustee"

(d) A statement dated September 29, 1978 of account #140-177, "Geo. F. Dick Jr. Estate, Geo. F. Dick III Trustee"

Each of said bank accounts was opened in 1971, during the lifetime of Althea M. Dick (who died October 10, 1976). The Bank's Exhibit #1A (Vol. [XV], C-3133) is a copy of the Will of George F. Dick, Jr. which contains, among others, the following terms and provisions:

> "I hereby give a life estate in all of my property to my wife, Althea M. Dick, she to have the full possession and sole management thereof as long as she shall live."

Said Exhibits (#10 and #1A) show that the Bank failed to inquire into George F. Dick III's authority to deposit and/or to withdraw estate funds and/or to hold himself out as a trustee during Althea's lifetime.

12. If the trustee deposits trust funds in a bank, the bank is liable for participation in the breach of trust in receiving or in permitting the trustee to withdraw the trust funds, where the trustee commits a breach of trust in making the deposit or withdrawal, if the bank received the deposit or permitted the withdrawal with notice of the breach of trust. Restatement of Trusts 2d § 324.

13. The Bank's Exhibit #17 (Vol. [XV], C-3270) is a copy of a check written on the first of the aforesaid two accounts. Said check is dated September 21, 1973; is payable to George F. Dick III in the amount of $3,000.00; and is signed by Ilene R. Beach. As set forth in Helen A. Dick's affidavit (Exhibit "A" hereto), Ilene R. Beach was an employee of the Bank. The aforesaid $3,000.00 is listed as a $3,000.00 loan to George F. Dick III in the Bank's Exhibit #1D (Vol. [XV], C-3139), a document summarizing loans totalling $112,900.00 which George III made to himself and his then wife Marilyn beginning in June of 1971 (i.e. during the lifetime of Althea M. Dick, who died October 10, 1976). Said Exhibit #1D is entitled, "Summary of Loans

by and Repayments to George F. Dick, Jr. Trust Made by George F. Dick III, as Trustee Taken from Records of George F. Dick III."

14. The Bank's Exhibit #2 (Vol. [XV], C-3141) shows, among other things, that when the Bank became trustee of the George F. Dick, Jr. Trust, on or about December 26, 1978, the Bank received a five page document from George F. Dick III entitled, "Geo. F. Dick, Jr. Trust Check Book From Acc't Opened" (C-3154) which, in itself, shows: (a) that George III was holding himself out as trustee of a purported George F. Dick, Jr. Trust as early as December of 1970 (i.e. almost six years before Althea's October 10, 1976 death); (b) all but one of the loans listed on the aforesaid summary (Exhibit #1D, Vol. [XV], C-3139), which included loans George III made to himself both before and after Althea's death. Despite having said five page document in its possession beginning on or about December 26, 1978, the Bank failed to compel accountings from George III as to his uses of such funds. The Bank did not file any sort of action as to these estates until its September 22, 1982 pleading filed in this case (Vol. I, C-19).

15. Such facts as to the aforesaid bank accounts, check and other loans would, had they been before the court in the Bank's 1982-1984 action, have shown the court that Count III of the Bank's pleading (Vol. I, C-19) involved a conflict between the interests of the Bank and the interests of beneficiaries (including Helen A. Dick).

16. Other documents that were not before the court during the Bank's action, and which show ways by which George III used property of the Estate of George F. Dick, Jr. for his (George III's) own benefit during the lifetime of Althea M. Dick, include but are not limited to the following;

(a) The Bank's Exhibit #22 (Vol. [XV],

C-3432) - documents as to loans to George III from the McLean County Bank, for which he was pledging the 80 shares, as collateral, as early as June 30, 1959, if not before (Liability Ledger page, C-3434). The highest outstanding balance was $86,400.00 on May 15, 1978 (C-3439).

(Helen A. Dick's request, of George III, for admissions as to said McLean County Bank records is at Vol. [VI], C-1329; George III's admissions are at Vol. [VII], C-1434.)

(b) The Bank's Exhibit #20 (Vol. [XV], C-3273) - documents as to real property in Colorado, California and New Mexico (which George III purchased, respectively, in 1962, 1975 and 1972, during the period of the aforesaid loans).

(In a supplementary response, Vol. [VI], C-1240, to interrogatories served upon him by Helen A. Dick, George III admitted that the New Mexico property was purchased at a cost of $13,552.00 and sold for $56,715.00, for a profit of $43,163.00.)

Helen A. Dick's request, of George III, for admissions as to his purchases of two parcels of Colorado property included certified copies of documents showing one parcel purchased for $1,500.00 in November 1963 and sold to the U.S.A. for $27,500.00 in September 1975. The other parcel was purchased for

$61,599.99 in October 1962 and sold off in seven separate transactions for a total of $273,750.00, the last such sale being in October 1977 to the U.S.A. (Vol. [VI], Request, C-1244; Admissions, C-1327.)

17. As set forth in Helen A. Dick's affidavit

(Exhibit "A" hereto), George III retained the use of the last parcel (Trail River Ranch, Grand Lake, Colorado) even after it was sold to the U.S.A. He was occupying that property when he was served with a Summons (filed October 6, 1982, Vol. I, C-47) in the Bank's 1982-1984 action.

18. As also set forth in Helen A. Dick's affidavit, she did not know or discover until in or about 1985 that the Bank was permitting holding company director George F. Dick III to vote shares of Peoples Mid-Illinois Corporation which the Bank held as trustee of the George F. Dick, Jr. Trust.

D.
EVENTS SINCE MARCH 14, 1984

1. In or about 1985, the aforesaid one-bank holding company (Peoples Mid-Illinois Corporation, a Delaware corporation) purchased an additional bank (First National Bank of Normal) with funds derived from the operation of Peoples Bank of Bloomington. The two banks were thereafter operated as one state bank ("The Peoples Bank") under the 1869 charter of Peoples Bank of Bloomington.

2. On or about March 1, 1995, Commerce Bancshares, Inc. (a Missouri corporation) obtained possession and control of "The Peoples Bank," subsequently changing the name of said bank to "Commerce Bank." Attached hereto (as Exhibit "B" are copies of pages 1, 3, 11, A-1 and A-40 of Securities and Exchange Commission Form 10-K, as published in the 1995 annual report of said Commerce Bancshares, Inc. Also attached hereto (as Exhibit "C") are copies of pages 1, 4, A-2 and A-32 of Form 10-K, as published in the 1994 annual report of said Commerce Bancshares, Inc. Page 4 within Exhibit "C" refers to, among other things, the acquisition of Peoples Mid-Illinois Corporation as

having been completed during the first three months of 1995.

3. Eleanor Dick Lyon died January 12, 1992; Helen A. Dick is executor and the sole beneficiary of Eleanor's estate. George F. Dick III died November 20, 1992; Peoples Bank of Bloomington had become trustee of his living trust on or about July 28, 1987. Helen Dick (who was George III's eldest sister and had no middle name or initial) died December 2, 1992; Peoples Bank of Bloomington had become trustee of her living trust on or about July 28, 1987. Petitioner Helen A. Dick is informed and believes, and therefore alleges, that the aforesaid George F. Dick III trust is presently being operated f/b/o George III's second wife, Betty, and that the aforesaid Helen Dick trust is presently being operated f/b/o George III's two sons (George F. Dick IV and James T. Dick). During the Bank's 1982-1984 action, Attorney Albert H. Hoopes represented George F. Dick III, George III's eldest sister (Helen Dick) and George III's said two sons.

4. The trust relation between the Bank and Helen A. Dick has not ended. The Bank is still trustee of the trust f/b/o Helen A. Dick that was created by the 1969 will of Althea M. Dick (a copy of which is the Bank's Exhibit #1B, Vol. [XV], C-3136).

5. The opinion in Helen A. Dick v. Peoples Mid-Illinois Corporation (4th Dist. 1993) 242 Ill.App.3d 279, shows only a few of the difficulties Helen A. Dick faced in her attempts to straighten out these estates before she began to question the validity of the 1982-1984 orders obtained by the Bank in this case.

E.
CONCLUSIONS AND PRAYER FOR RELIEF

1. Collateral estoppel applies as to each and every issue that was adjudicated against the interests of

the Bank, George F. Dick III and/or a privy holding company (e.g. Peoples Mid-Illinois Corporation) during the Bank's 1982-1984 action.

2. Collateral estoppel does not apply against Helen A. Dick as to all or part of any order entered regarding the Bank's Count I, II, III and/or IV.

3. Upon its succession to the fiduciary positions previously held by George F. Dick III (on or about December 26, 1978), the Bank had the duty to require George III to account for each entire trust. The Bank failed to compel any accountings from said George III, including but not limited to the court-ordered accounting (as to Count I) of shares (Order entered March 2, 1984, Vol. [VII], C-1583). For failure to compel such accountings, the Bank may be held liable for the entire value of each said trust. Bullis v. DuPage Trust Co. (2d Dist. 1979) 72 Ill.App.3d 927, 933.

4. A trustee's primary obligation is that of undivided loyalty to the beneficiary. Britton v. Winger (4th Dist. 1982) 110 Ill.App.3d 230, 233, quoting Justice Cardozo. A trustee is not permitted to place himself in a position where it will be difficult for him to be honest and faithful to his trust. Campbell v. Albers (2d Dist. 1942) 313 Ill.App. 152, 167.

5. Because the Bank had participated in some of the acts set forth in Counts I, II and III of its pleading, and because its predecessor fiduciary (George III) was still a director of Peoples Mid-Illinois Corporation (the one-bank holding company which had participated in acts set forth in Counts I, II and IV of the Bank's pleading, Vol. I, C-19), it was never possible for the Bank to represent the interests of beneficiaries (including Helen A. Dick) with undivided loyalty. The Bank's first improper and/or questionable act [as trustee] was to accept the position(s) as trustee/successor fiduciary of the Estates of George F.

Dick, Jr. and Althea M. Dick.

6. When accepting the position(s) as trustee/successor fiduciary on or about December 26, 1978, the Bank knew that George F. Dick III was a director of the one-bank holding company (Peoples Mid-Illinois Corporation) and knew that said George III would probably vote holding company shares in a manner that was clearly against the interests of beneficiaries (including Helen A. Dick) in the highest possible income. As a corporation holding itself out for hire as a trustee, the Bank knew that even if the Will of George F. Dick, Jr. (Bank's Exhibit # 1A, Vol. [XV], C-3133) had provided for George III to be able to vote shares of a holding company after he (said George III) resigned as trustee, that said George III had the duty to vote shares in such a way as to promote interests of the beneficiaries (including Helen A. Dick) in the highest possible income. The Bank thus knew that it had the duty as trustee to restrain George III, by injunction or otherwise, from casting any vote which would violate his duty to the beneficiaries (including Helen A. Dick). Restatement Trusts 2d § 193, p. 427. The Bank failed to do so.

7. The Bank's own Exhibits (Vol. [XV], C-3133 et seq.) show, among other things, that the action against George F. Dick III could have been tried as a net worth case based on George III's having become a millionaire by using estate property for his (George III's) own benefit during Althea's lifetime. Said Exhibits show that the Bank failed to enforce claims to recover all property that properly belonged to the Estates of George F. Dick, Jr. and Althea M. Dick.

8. As the record shows, Helen A. Dick was not independently represented by an attorney and depended upon the trustee Bank to fully and fairly represent her interests throughout the Bank's 1982-1984 action. The Bank failed so to do.

9. The Bank's aforesaid acts and failures to act were gross, willful and/or wanton breaches of the Bank's fiduciary duties to the beneficiaries (including Helen A. Dick).

WHEREFORE, Helen A. Dick prays:

A. That said Helen A. Dick be brought in as a party plaintiff to Counts I, II, III and IV of the Bank's September 1982 (Vol. I, C-19) pleading.

B. That Peoples Bank of Bloomington/The Peoples Bank/Commerce Bank be re-aligned as a party defendant to said Counts I, II, III and IV.

C. That Peoples Mid-Illinois Corporation/Commerce Bancshares, Inc. be brought in as a party defendant to Counts I, II and IV.

D. That the court vacate and set aside (in whole or in part) each 1982-1984 order and/or finding as to the Bank's Count I, II, III and/or IV that was against the interests of beneficiary Helen A. Dick, including but not limited to Judge Baner's finding in favor of George F. Dick III as to the issue of remainder distribution of shares (Order entered March 2, 1984, Vol. [VII], C-1583).

E. For recovery of the 2,730 shares of the Capital Stock of the Peoples Bank of Bloomington which were property of the Estate of George F. Dick, Jr. in early 1972 (namely, 2400 of the shares registered to George F. Dick III individually and/or his then wife Marilyn, and the 330 shares still registered to Althea M. Dick as Life Tenant), by which Peoples Mid-Illinois Corporation was unjustly enriched due to the mid-1972 conversion of all shares of the Capital Stock of the Peoples Bank of Bloomington to the use and beneficial enjoyment of said Peoples Mid-Illinois Corporation.

F. For recovery of the 1,830 shares of the Capital Stock of the Peoples Bank of Bloomington which were Althea's individual property in early 1972,

and by which Peoples Mid-Illinois Corporation was unjustly enriched due to the aforesaid mid-1972 conversion of all shares of the Capital Stock of the Peoples Bank of Bloomington to the use and beneficial enjoyment of said Peoples Mid-Illinois Corporation.

G. For the transfer, payment and/or delivery to Helen A. Dick of the aforesaid 4,560 shares of the Capital Stock of the Peoples Bank of Bloomington (i.e., .076 of the 60,000 shares authorized and issued after the 1967 stock dividend and split set forth in the Bank's Exhibit #14, Vol. [XV], C-3263).

H. For a finding that the Bank has unjustly enriched the holding company (i.e., Peoples Mid-Illinois [Corp.] and/or its successor, Commerce Bancshares, Inc.) by paying dividends to a holding company on the aforesaid shares of the Capital Stock of the Peoples Bank of Bloomington.

I. For the Bank to be ordered and directed to account for all such dividends paid since the aforesaid mid-1972 conversion; for the Bank, after court approval of such accounting, to be compelled to pay a like sum to Helen A. Dick; and for the Bank to be ordered and directed to pay the future dividends on such shares to Helen A. Dick as the beneficial owner.

J. For the Bank to be ordered and directed to account for all advantages George F. Dick III received by having property of the estate of George F. Dick, Jr. in his (George III's) possession and control (e.g., the shares which the Bank transferred to George III on March 31, 1959 and the unsecured loans which are set forth in the Bank's Exhibit # 1D (Vol. [XV], C-3139); for said accounting(s) to include advantages George III obtained by using property of the Estate of George F. Dick, Jr. either directly (as by pledging same as collateral to the McLean County Bank) or indirectly (as by representing to other banks, when listing stock shares on financial statements to obtain loans from

other banks, that he was the rightful owner of such shares); for said accounting(s) to include investments George III made in real property in Colorado, California, New Mexico, Illinois, and any commercial venture, Land Trust, Living Trust or other trust in which said George III invested and/or to which he transferred any property or liquid assets; for such accounting(s) to include the fair market value of George III's uses of Illinois income property (town-houses or duplexes) as a residence for his family and the fair market value of George III's uses of said Colorado property as a vacation home for his family.

K. For a finding that the Bank has been unjustly enriched by any management fees it has taken since becoming trustee of the George F. Dick, Jr. and Althea M. Dick Trust(s) on or about December 26, 1978; for the Bank to be ordered and directed to account for all such fees; and for the Bank, after court approval of such accounting(s), to be compelled to pay a like sum to Helen A. Dick.

L. For punitive and/or exemplary damages against the Bank and in favor of Helen A. Dick.

M. For such other and further, or different, relief as the court may deem just and proper.

(Signed) Helen A. Dick

(Verification notarized June 12, 1996)

Helen A. Dick, pro se
3323 - 13th Ave. Court
Moline, Illinois 61265
Phone: (309) 762-7014

[Exhibits A (an Affidavit), B and C (copies of pages from two Annual Reports of Commerce Bancshares have not been reproduced in this Appendix.]

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON,
as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,
Plaintiff,
v.
GEORGE F. DICK III, et al.,
Defendants.

No. 82-CH-124

SPECIFICATION
[Vol. XX, C-4259, filed July 2, 1996]

In compliance with Judge Baner's docket order of June 27, 1996, petitioner Helen A. Dick hereby states that the following orders are the subject of her petition filed June 13, 1996:

1. Judge Baner's February 21, 1984 Order (Vol. [VII], C-1564) as to, among other things, Helen A. Dick's not being a party to any of the counts then remaining (Counts I, II, III and IV).
2. Judge Baner's March 2, 1984 Order (Vol. [VII], C-1583) regarding Summary Judgment as to some of the issues raised by the Bank's September 22, 1982 pleading.
3. Judge Baner's March 14, 1984 Order (Vol. [VII], C-1618) as to the attached Stipulation of dismissal ([Vol. VII], C-1617) filed that same date by the Bank and George F. Dick III.

Said orders are described with greater particularity at pages 4-5 (paragraphs 4 through 6), page 9 (paragraphs 9 and 10) and page 17 (paragraph D of the prayer for relief of said June 13, 1996 petition.

The Bank (Peoples Bank of Bloomington/The Peoples Bank/Commerce Bank) was served June 14, 1996 with a complete copy of said June 13, 1996 petition. A June 24, 1996 file-stamped copy of the original Summons and a copy of the process server's "Affidavit of Service of Process" are attached hereto as Exhibit "A."

(Signed) Helen A. Dick

Helen A. Dick, pro se
3323 - 13th Ave. Court
Moline, Illinois 61265
Phone: (309) 762-7014

[THE PARAGRAPHS OF THE JUNE 1996 PETITION REFERRED TO ABOVE ARE, RESPECTIVELY, AT PAGES 25, 29 AND 38 OF THIS APPENDIX.

THE SUMMONS WHICH WAS EXHIBIT "A" TO THE ABOVE SPECIFICATION HAS NOT BEEN REPRODUCED IN THIS APPENDIX.]

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,
Plaintiff,
v.
GEORGE F. DICK III, et al.,
Defendants.

No. 82-CH-124

PETITION TO VACATE ORDER(S) OBTAINED
BY FRAUD UPON THE COURT
[filed January 11, 1994, Vol. XVII, C-3793]

Petitioner Helen A. Dick, pro se, hereby states the following;

A.
IN GENERAL

1. Petitioner is a beneficiary of trusts created by the wills of George F. Dick, Jr., and Althea M. Dick.

2. The Peoples Bank (formerly Peoples Bank of Bloomington, hereinafter the Bank) is trustee of the trust for Helen A. Dick which was created by the 1969 will of Althea M. Dick. Until shortly after the January 12, 1992, death of Eleanor D. Lyon, the Bank was trustee of the trust created by the will of George F. Dick, Jr. The Bank had become trustee of said trusts on December 26, 1978, and December 20, 1978 (Receipt of Trustee filed in the Matter of the Estate of Althea M. Dick, McLean County Probate 76-P-554).

3. On March 14, 1984, an order of dismissal

was entered in the above-entitled cause by the Honorable Richard M. Baner.

4. As set forth more fully hereinafter and in the supporting Affidavit of Helen A. Dick, said order of dismissal was entered by the Court through errors of fact which, if then known to the Court, would have prevented the Court from entering said order.

5. As the record shows, the Bank and George F. Dick III obtained the aforesaid order of dismissal on the morning scheduled for trial to begin (March 14, 1984) by presenting a signed stipulation to the Court in which said Bank and George III represented that all then-pending claims had been "fully compromised and settled" and that the cause should be dismissed as to them with prejudice.

6. The Bank did not reveal to the Court that Helen A. Dick had informed the Bank (through its attorneys) that the combined estates of George F. Dick, Jr. and Althea M. Dick were worth approximately half a million dollars (not including personal property such as household furnishings) when George Jr. died in May 1955---and that in May 1955, 80 shares of the Capital Stock of the Peoples Bank of Bloomington had a total value of $50,000---and that the reason George F. Dick III was not to receive an equal portion of said estates was that George Jr. had given George III a job at the Bank and enough shares (10) to qualify him as a director, but none of the three daughters were self-supporting or employed.

7. The Affidavit of George R. Morrison, President of the Bank after George F. Dick, Jr. resigned as the Bank's president a week before his death, is filed with the Illinois Inheritance Tax Return, George F. Dick, Jr., McLean County Number 6770 and shows that the Capital Stock of the Bank sold for $625 per share in 1954-1956.

8. The Bank did not reveal to the Court that

one of its attorneys told Helen A. Dick in about mid-1983 that the Bank's action was a net worth case, based on George F. Dick III's having become a millionaire due to advantages he had obtained while using property of the Estate of George F. Dick, Jr. for his (George III's) own benefit during the lifetime of George Jr.'s widow, Althea M. Dick.

9. The Bank did not reveal to the Court that another of its attorneys told Helen A. Dick in or about mid-1983 that property worth half a million dollars in 1955 would, if properly managed, be worth about three million dollars by 1982-83.

10. The record shows that the exhibits marked as the Bank's exhibits during the pre-trial conference on February 22, 1984 (including but not limited to George F. Dick III's Financial Statements and copies of deeds to property in California, New Mexico and Colorado) were marked in preparation for the matter to be tried as a net worth case.

11. A copy of the settlement agreement between the Bank and George F. Dick III is attached hereto as Exhibit "A" and shows on its face that the Bank settled with George III for a total of $120,000, $60,000 of which was to be applied to the trust established by the Will of George F. Dick, Jr.

12. Said agreement/contract (Exhibit "A" attached hereinabove) also shows on its face that when signing same, the Bank's then president, Jerry Gummere, represented that the Bank and its officers were "duly authorized to execute this agreement and fulfill its terms."

13. The Bank did not bring attention to the fact that neither the 1953 will of George F. Dick, Jr. nor the 1969 will of Althea M. Dick (copies of which are attached hereto, respectively, as Exhibits "B" and "C") contain any term or provision authorizing the settlement, compromise or abandonment of claims.

14. The Bank did not reveal that there was and is no such statutory authority applicable to said wills, both of which were executed prior to October 1, 1973 (760 ILCS 5/3 et seq., formerly Ill.Rev.Stat. ch. 17, sec. 1653 et seq.).

15. The Bank did not reveal that any such agreement/contract was void because both parties (the Bank and George F. Dick III, who was an attorney and who had been executor of both wills) knew that settlement, compromise or abandonment of claims was not authorized by will or by statute and/or was void because both parties had entered said agreement/contract for purposes of defrauding third parties, including but not limited to the Court and Helen A. Dick.

16. The Bank refused Judge Baner's offer to review the settlement agreement (Record Sheet entry of March 14, 1984), thus the Bank and George F. Dick III concealed its terms and provisions from the Court.

17. The Bank did not reveal to the Court that Helen A. Dick informed the Bank, through one of its attorneys, that she believed there was no way/procedure by which she could (attempt to) set aside that or any other agreement to which she was not a party.

18. The record shows that it was through no fault or negligence on the part of Helen A. Dick that the Bank and George F. Dick III obtained Judge Baner's entry of the aforesaid March 14, 1984, order of dismissal. The Bank's Counts V and VII had been dismissed (Record Sheet entry of January 18, 1983). The Bank had dismissed Helen A. Dick out of the main case altogether when it voluntarily dismissed its Count VI (Record Sheet entry of February 15, 1984), which had been a count for discovery. On February 21, 1984, Judge Baner had entered an order finding that Helen A. Dick was not a party to any of the counts then remaining (Counts I, II, III and IV) and that she could not submit factual matters or present argument. Helen

A. Dick voiced her objection to the Bank's dismissing its action but had no standing to prevent it (Record Sheet entry of March 14, 1984).

B.
AS TO THE TITLE OF THE PLEADING
FILED BY THE BANK

1. As the record shows, the pleading filed by the Bank was entitled "Construction of Testamentary Trusts."

2. Said title drew attention away from the fact that Counts I, II and V were counts for construction of the will of George F. Dick, Jr.

3. The Bank did not reveal that Helen A. Dick was a necessary party to each count for will construction and/or that any finding against her interests would be moot as to her where she was not a party to such counts.

* * * * * * *

CONCLUSIONS AND PRAYER FOR RELIEF

1. Upon its succession to the fiduciary positions previously held by George F. Dick III, the Bank had the duty and responsibility to bring suit on behalf of the trusts for any wrongdoing by the prior fiduciary---and the duty to enforce claims to recover all property that properly belonged to the estates of George F. Dick, Jr. and Althea M. Dick.

2. The Bank did not fulfill its aforesaid duties and responsibilities.

3. The Bank became trustee of these estates in December 1978, at which time it knew all material facts pertaining to these various causes of action. The Bank did not file any pleading until the one filed herein on

September 22, 1982, which concealed many material facts from the Court (and from Helen A. Dick) to and through the time of the March 14, 1984 settlement agreement; the Bank's refusal of the Court's offer to review the settlement agreement; and the Court's entry of the March 14, 1984 order of dismissal.

* * * * * * *

WHEREFORE, petitioner prays:

A. That the March 14, 1984, order of dismissal be vacated and set aside.

B. That the Court review the settlement agreement and find that said agreement/contract is void and/or that said agreement/contract does not bar Helen A. Dick from filing a counterclaim against the Bank.

C. That the Court find that, under the circumstances this pleading is a counterclaim timely filed against the Bank.

D. That The Peoples Bank (formerly Peoples Bank of Bloomington) be ordered and directed to account for (on a per share basis where practical) all shares which were transferred to George F. Dick III by the Bank on March 31, 1959, and all benefits therefrom paid, transferred and/or delivered to George III (and others to whom he sold and/or transferred some shares) by the Bank and/or by Peoples Mid-Illinois Corporation in the form of stock shares after March 31, 1959, and in the form of cash dividends after October 10, 1976.

* * * * *

I. That the Bank, after court approval of the aforesaid accountings, be compelled to pay Helen A. Dick like sums in the amounts to which she is entitled under the wills of George F. Dick, Jr. and Althea M. Dick.

* * * * *

P. For such other and further, or different,

relief as the Court may deem just and proper.

(Signed) Helen A. Dick

Helen A. Dick
3323 - 13th Ave. Court
Moline, IL 61265
Phone: (309) 762-7014

(Verification notarized January 10, 1994)

[Exhibits A (a copy of the Settlement Agreement between the Bank and George III), B (a copy of the will of George F. Dick, Jr.) and C (a copy of the 1969 will of Althea M. Dick) have not been reproduced where appended to the above pleading.]

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,
Plaintiff,
v.
GEORGE F. DICK III, HELEN M. [sic] DICK, ELEANOR DICK LYON, HELEN A. DICK YEAGER a/k/a HELEN A. DICK and HELEN A. DICK, JR., LLOYD R. YEAGER JR., CAROLINE M. DULANEY, ROBERT F. YEAGER, GEORGE D. YEAGER, JAMES DICK and GEORGE F. DICK IV,
Defendants.

No. 82-CH-124

CONSTRUCTION OF TESTAMENTARY TRUSTS
[filed September 22, 1982, Vol. I, C-19]

Plaintiff, PEOPLES BANK OF BLOOMINGTON, as successor trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as trustee of trusts created by the Will of Althea M. Dick, deceased, names George F. Dick III, Helen M. [sic] Dick, Eleanor Dick Lyon, Helen A. Dick Yeager, a/k/a Helen A. Dick and Helen A. Dick, Jr., Lloyd R. Yeager, Jr., Caroline M. Dulaney, Robert F. Yeager, George D. Yeager, James Dick and George F. Dick IV as defendants.

Appendix

COUNT I

For its Count I against defendant, George F. Dick III, plaintiff alleges:

1. George F. Dick, Jr. died May 8, 1955 leaving a will dated July 14, 1953, which was admitted to probate in the County, now Circuit Court, of McLean County. His heirs, devisees and legatees were Althea M. Dick, his wife, and defendants Eleanor D. Lyon, Helen M. [sic] Dick, Helen A. Dick Yeager and George F. Dick III, his children. Helen A. Dick Yeager was the child of Eleanor D. Lyon and the adopted child of George F. Dick, Jr. and Althea M. Dick. A copy of the will of George F. Dick, Jr. is attached as Exhibit A.

2. Althea M. Dick (who died in 1976) and George F. Dick III were named and served as executors of the will of George F. Dick, Jr. until the final report of the executors on or about July 5, 1956. George F. Dick III was named and served as trustee of the trusts created by the will of George F. Dick, Jr. until December 26, 1978, when he resigned, and plaintiff became successor trustee.

3. Althea M. Dick died October 10, 1976, leaving a will dated January 23, 1969, which was admitted to probate in the Circuit Court of McLean County. Her heirs, devisees and legatees were the four defendants named in paragraph 1 supra. A copy of the will of Althea M. Dick is attached as Exhibit B. A chart showing family relationships is attached as Exhibit C to this complaint.

4. Defendant, George F. Dick III was named and served as executor of the will of Althea M. Dick until discharged January 15, 1979, when plaintiff became trustee of the trusts created by the will of Althea M. Dick.

5. George F. Dick III is an attorney. He was employed by plaintiff as Assistant Trust Officer in 1947,

became a Vice President and member of the Board of Directors in 1950, Executive Vice President in 1960, President in 1962, Chairman of the Board of Directors in 1976, and retired from the plaintiff bank in February of 1981.

6. The will of George F. Dick, Jr. contained the following, among other, provisions:

> I hereby give a life estate in all of my property to my wife, Althea M. Dick, she to have the full possession and sole management thereof as long as she shall live.
>
> I also empower my wife, Althea M. Dick, to have authority to sell, transfer and convey any of the assets in my estate during her lifetime which she may think is for the best interest of my estate and I waive the requirements of furnishing bond by her in said sales and the purchaser is not required to see to the proper application of the purchase money.
>
> After the death of my wife, Althea M. Dick, the remaining Executor of this Will shall transfer and assign to my son, George F. Dick, III, Eighty (80) Shares of the Capital Stock of the Peoples Bank of Bloomington as and for his individual property.
>
> All the rest and residue of my estate remaining shall pass to my son, George F. Dick, III, as Trustee, for the benefit of my children, Helen Dick, Eleanor Dick Lyon, and Helen A. Dick, under the terms and conditions hereinafter set forth.
>
> * * * * *
>
> I desire my son, George F. Dick, III, to vote any and all Capital Stock of the Peoples Bank in said Trust during the life of said Trust.
>
> * * * *

> No interest under this Will shall be transferable or assignable by any beneficiary (except by the Wills of Helen Dick and Helen A. Dick as provided above) or subject to the claims of their creditors, and all income distributions shall be paid to each beneficiary in person and not on any written order or assignment from any beneficiary.

7. Upon the date of his death in 1955 George F. Dick, Jr. was the owner of 91 shares of stock of plaintiff. On or about March 31, 1959, 80 shares of stock of plaintiff bank were transferred from the trust estate created by the will of George F. Dick, Jr. to George F. Dick III, who enjoyed the benefits of full ownership of such stock from that date on.

8. On or about August 1, 1967, there was a 30 for 1 split of plaintiff's stock, and on or about June 3, 1972, all of plaintiff's shares (except directors' qualifying shares) were exchanged on a 1 for 1 basis for shares of Peoples Mid-Illinois Corporation, a Delaware corporation and a one bank holding company, and on or about April 17, 1978, there was a 3 for 1 stock split of the shares of Peoples Mid-Illinois Corporation.

9. Plaintiff is uncertain whether under a proper construction of the will of George F. Dick, Jr.;

> (a) It was proper for George F. Dick III, the trustee and defendant herein, to accept and enjoy the benefits of said 80 shares of plaintiff prior to the death of Althea M. Dick in 1976.
>
> (b) George F. Dick III should have received 80 shares of stock of plaintiff upon the death of Althea M. Dick in 1976 rather than the 2,400 shares resulting from the 30 for 1 stock split which occurred in 1972.

WHEREFORE, plaintiff prays:

A. That the Court construe the will of George F. Dick, Jr. with regard to questions raised in paragraph 9 supra.

B. If it was improper for defendant George F. Dick III to receive and enjoy the benefits of the bank shares prior to 1976 or if defendant George F. Dick III should have received 80 [rather than 2,400] shares in 1976, that defendant George F. Dick III be ordered and directed to account to plaintiff as successor trustee for the benefit of the beneficiaries for all stock or monies owing the trust estate.

C. That the Court grant such other relief as may be just and proper, including a judgment for plaintiff's costs and attorney fees.

COUNT II

For its Count II against the defendant, GEORGE F. DICK III, plaintiff alleges:

1, 2, 3, 4, 5 and 6. Plaintiff realleges paragraphs 1, 2, 5, 6, 7 and 8 of Count I as paragraphs 1 through 6 of this Count II.

7. The 11 shares of stock of plaintiff bank which were owned by George F. Dick, Jr. at the time of his death and which were not included in the conveyance to George F. Dick III in 1959, had become 330 shares as a result of a 30 for 1 split of stock of plaintiff bank, and the 1 for 1 exchange on or about June 3, 1972, converted said shares into shares of Peoples Mid-Illinois Corporation.

8. In or about October of 1972, defendant George F. Dick III induced his sister, defendant Helen M. [sic] Dick, to borrow $20,625 from plaintiff bank, which sum was deposited in the trust account of the trust created by the will of George F. Dick, Jr. As a part of the same transaction, George F. Dick III induced his mother, Althea M. Dick, to sell said 330 shares of

Peoples Mid-Illinois Corporation to Helen M. [sic] Dick; he then issued a check from said trust account in the sum of $20,625 to Helen Dick, and Helen Dick assigned said 330 shares to George F. Dick III as trustee under the will of George F. Dick, Jr. Helen Dick used the $20,625 check from the trust account to repay her loan to plaintiff bank. George F. Dick III as trustee paid $111 interest on Helen Dick's above-referred to loan from trust funds.

9. Plaintiff is uncertain whether the above-described transaction was for a proper trust purpose and authorized under the will of George F. Dick, Jr., and if not, whether such transaction resulted in any loss or damage to any trust beneficiary.

WHEREFORE, plaintiff prays that this Court determine whether under a true construction of the will of George F. Dick, Jr. the described transaction was proper, and if not, whether any loss resulted to any trust beneficiary, and if so, that judgment be entered against said defendant or defendants and that plaintiff have such additional relief as may be just and proper.

COUNT III

For its Count III against defendant, GEORGE F. DICK III, plaintiff alleges:

1-5. Plaintiff realleges paragraphs 1 through 5 of its Count I herein as paragraphs 1 through 5 of this Count III.

6. The records maintained by defendant George F. Dick III disclose that commencing on or about June 11, 1971, and continuing until June 19, 1978, he, as trustee under the will of George F. Dick, Jr. failed to invest the trust funds he held, but in fact made unsecured loans to himself and to his then wife, Marilyn Dick, totalling $112,900, the largest unsecured sum outstanding at any particular time, being $88,900

from September 20, 1977 until June 18, 1978. The records maintained by defendant George F. Dick III further disclose that payments designated as principal or interest or both were made from time to time to George F. Dick III as trustee, with a final payment of $88,900 on June 19, 1978. A summary of the dates and amounts of said loans and repayments as shown by the records maintained by George F. Dick III is attached hereto as Exhibit D.

7. The use of trust funds by defendant George F. Dick III, referred to in the preceding paragraph, was a gross breach of defendant George F. Dick III's duties as trustee of the trusts created by the will of George F. Dick, Jr.

8. The trusts created by the will of George F. Dick, Jr. have suffered large losses, and George F. Dick III has profited as a result of his breaches of trust, and said defendant should account to the trusts and plaintiff as successor trustee for all such profits and for all losses suffered by the trusts.

WHEREFORE, plaintiff prays:

A. That the Court order and direct defendant George F. Dick III to account to the plaintiff as successor trustee for all profits or gains accruing as a result of any use by either George F. Dick III or Marilyn Dick of any funds of the trusts created by the will of George F. Dick, Jr.

B. That the Court determine the amount of the losses sustained by the trust estates resulting from the use of trust funds by said defendant and his then wife, Marilyn Dick.

C. That the Court enter judgment against defendant George F. Dick III for any profits made by defendant George F. Dick III and/or his then wife Marilyn Dick, and for all losses sustained by the trusts resulting from such use of trust funds by said defendant and/or Marilyn Dick.

D. That the Court enter its judgment for exemplary damages against said George F. Dick III, if the Court finds such damages justified.

E. That the Court grant such other relief as may be just and proper, including exemplary damages if justified by the evidence herein, and judgment for plaintiff's costs and attorney fees.

COUNT IV

For its Count IV against defendant, GEORGE F. DICK III, plaintiff alleges:

1-5. Plaintiff realleges paragraphs 1 through 5 of Count I as paragraphs 1 through 5 of this Count IV.

6-7. Plaintiff realleges paragraphs 7 and 8 of Count I as paragraphs 6 and 7 of this Count IV.

8. On or about June 27, 1977, defendant, George F. Dick III, as executor of the estate of Althea M. Dick, sold 500 shares of stock of Peoples Mid-Illinois Corporation for $45,000 to Peoples Mid-Illinois Corporation, the one bank holding company which had acquired all the stock of Peoples Bank of Bloomington. This sale was not necessary for the proper administration of the estate of Althea M. Dick.

9. In view of George F. Dick III's position as Chairman of the Board of Peoples Mid-Illinois Corporation, as well as executor of the Estate of Althea M. Dick, this does not appear to be an arms length transaction, and George F. Dick [III] should be required to show that this sale was for a proper trust purpose and for a proper price.

10. A few months after this sale, the stock of Peoples Mid-Illinois Corporation was split 3 for 1, resulting along with other things in a substantial increase in value of said stock. George F. Dick III, as bank [sic] Chairman, knew or should have known of these developments and he failed to preserve the estate

assets.

WHEREFORE, plaintiff prays judgment against defendant George F. Dick III for the amount, if any, by which the fair cash market value of said shares of Peoples Mid-Illinois Corporation exceeded the sum of $45,000 for which they were sold on or about June 27, 1977 and that plaintiff have such other and further relief as may be just and proper.

COUNT V

For its Count V against all defendants plaintiff alleges:

1-5. Plaintiff realleges paragraphs 1 through 5 of Count I for paragraphs 1 through 5 of this Count V.

6. The will of George F. Dick, Jr. contained the following among other provisions;

> My wife, Althea M. Dick, in her will has established a Trust similar to the one I have established here and I authorize the Trustee in each of said Wills to consolidate the Trust in my will and my wife's Will and to operate it as one Trust Estate.

7. Plaintiff has no other knowledge as to whether Althea M. Dick had such a will in or about the time in 1953, when George F. Dick, Jr. executed his will, whether or not Althea M. Dick was contractually obligated to execute a similar will, and if so whether the will referred to in paragraph 3 supra complies with such contractual obligation, if any.

WHEREFORE, plaintiff seeks the aid and assistance of the Court in determining whether the will of Althea M. Dick should have been admitted to probate and the trusts therein provided created or whether the net estate of Althea M. Dick should go into the trust

created by the will of George F. Dick, Jr., and for such other relief as may be just and proper.

COUNT VI

For its Count VI against GEORGE F. DICK III, HELEN M. [sic] DICK, ELEANOR DICK LYON, HELEN A. DICK YEAGER, LLOYD R. YEAGER, JR., CAROLINE M. DULANEY, ROBERT F. YEAGER, GEORGE D. YEAGER, JAMES DICK AND GEORGE F. DICK IV, plaintiff alleges:

1-5. Plaintiff realleges paragraphs 1 through 5 of Count I as paragraphs 1 through 5 of this Count VI.

6. Certain of the above defendants claim that defendant George F. Dick III, as trustee of the trusts created by the will of George F. Dick, Jr. and/or as executor of the will of Althea M. Dick, improperly commingled the assets of said estates and also disposed of assets of said estates which he should have continued to hold, and disposed of such assets for less than their far cash market value and committed various other breaches of trust prior to the time or times plaintiff became successor trustee of the George F. Dick, Jr. trust and trustee of the Althea M. Dick trusts.

WHEREFORE, plaintiff prays for discovery as to the nature and validity of the claims, if any, of said defendants and for such other and further relief against said defendants as may be just and proper.

COUNT VII

For its Count VII against GEORGE F. DICK III, HELEN M. [sic] DICK, ELEANOR DICK LYON, HELEN A. DICK YEAGER, LLOYD R. YEAGER, JR., CAROLINE M. DULANEY, ROBERT F. YEAGER, GEORGE D. YEAGER, JAMES DICK and GEORGE F. DICK, IV, plaintiff alleges:

1-3. Plaintiff realleges paragraphs 1, 2 and 5 of its Count I for its paragraphs 1-3 of this Count VII.

4. The will of George F. Dick, Jr. contained the following, among other provisions;

> All the rest and residue of my estate remaining shall pass to my son, George F. Dick, III, as Trustee, for the benefit of my children, Helen Dick, Eleanor Dick Lyon, and Helen A. Dick, under the terms and conditions hereinafter set forth.
>
> * * * * *
>
> The Income from said Trust Estate shall be divided into three equal parts and one part paid to each of my three daughters hereinabove named. I request that said distribution of income be made in quarterly payments.
>
> The trust for my daughter, Eleanor D. Lyon, shall continue for and during her natural life, however, during her life should the income from her share in said Trust Estate not be sufficient for her proper maintenance and support, than the Trustee in his discretion is authorized to allow her to withdraw from the corpus such sums as may be necessary from time to time for her personal and individual comfort, maintenance and support. Whatever is left in the corpus of said estate belonging to Eleanor D. Lyon at the time of her death, shall be equally divided between Helen Dick, Helen A. Dick and George F. Dick, III, and by the Trustee paid over to them.
>
> At the death of my daughter, Eleanor D. Lyon, I desire the Trusts herein established for my three daughters shall cease and deter-

> mine, and I authorize the Trustee herein to pay and turn over to my daughter, Helen Dick, her one-third interest in said Trust, less any withdrawals of principal made by her, and also to pay to Helen A. Dick, her one-third interest in said Trust, less any withdrawals of principal made by her. The Trustee is further authorized to distribute whatever remains in the corpus of the Trust established for my daughter, Eleanor D. Lyon, equally between my daughters, Helen Dick and Helen A. Dick, and my son, George F. Dick, III. In the event that the income from the Trust Estate going to Helen Dick and Helen A. Dick should not be sufficient for the proper maintenance and support of either of them, then the Trustee in his discretion is authorized to allow either one or both of them to withdraw from the corpus of their Trusts such sum as may be necessary from time to time for her or their personal and individual comfort, maintenance and support.
>
> * * * * *
>
> No interest under this Will shall be transferable or assignable by any beneficiary (except by the Wills of Helen Dick and Helen A. Dick as provided above) or subject to the claims of their creditors, and all income distributions shall be paid to each beneficiary in person and not on any written order or assignment from any beneficiary.

5. Plaintiff understands that the following questions may not arise, but nonetheless asks the court's guidance to avoid a possible multiplicity of suits. While the will plainly states that the trusts shall all terminate and be distributed at the death of Eleanor D. Lyon, it is not clear what disposition the successor

trustee should make of income or principal in the event either Helen M. [sic] Dick, Helen A. Dick or George F. Dick III, or any or all of them, predecease Eleanor D. Lyon. While the will of George F. Dick, Jr. contains the language "No interest under this will shall be transferable or assignable by any beneficiary (except by the Wills of Helen M. [sic] Dick and Helen A. Dick as provided above)," there is no previous provision so providing.

WHEREFORE, plaintiff prays that the Court construe the will of George F. Dick, Jr. and advise plaintiff successor trustee as to its duties as regards the proper disposition of both the income and corpus of said trusts in the event Helen Dick, Helen A. Dick, George F. Dick III, or any or all of them, should predecease said Eleanor D. Lyon.

PEOPLES BANK OF BLOOMINGTON, Successor Trustee of the trusts created by the will of George F. Dick, Jr., deceased, and as Trustee of the trusts created by the will of Althea M. Dick, deceased, Plaintiff

By SAMUELS, MILLER, SCHROEDER, JACKSON & SLY
By William M. Rice

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Appendix

[Exhibit "A," Vol. I, C-34, to Peoples Bank's pleading, Vol. I, C-19, filed Sept. 22, 1982]

I, GEORGE F. DICK, JR., of Bloomington, McLean County, Illinois, do make, publish and declare this to be my Last Will and Testament, hereby revoking all other Wills by me heretofore made.

It is my wish that the Executors hereinafter named shall pay my funeral expenses and debts, including Federal Estate and State Inheritance Taxes.

Whatever automobile I may own at the time of my death, I give to my wife, Althea M. Dick.

I hereby give a life estate in all of my property to my wife, Althea M. Dick, she to have the full possession and sole management thereof as long as she shall live.

I also empower my wife, Althea M. Dick, to have authority to sell, transfer and convey any of the assets in my estate during her lifetime which she may think is for the best interest of my estate and I waive the requirements of furnishing bond by her in said sales and the purchaser is not required to see to the proper application of the purchase money.

After the death of my wife, Althea M. Dick, the remaining Executor of this Will shall transfer and assign to my son, George F. Dick, III, Eighty (80) Shares of the Capital Stock of the Peoples Bank of Bloomington as and for his individual property.

All the rest and residue of my estate remaining shall pass to my son, George F. Dick, III, as Trustee, for

the benefit of my children, Helen Dick, Eleanor Dick Lyon, and Helen A. Dick, under the terms and conditions hereinafter set forth.

Said Trustee shall manage and care for the property that comes into his possession in the same manner that any prudent man would manage and care for his property; shall rent the land; look after the fertility thereof; insure the buildings for their insurable value; and do any and all things that any prudent owner would do in the management of his own land and property.

I own an undivided two-thirds (2/3) interest in a farm in West Township, McLean County, Illinois, my brother's Estate owning the remaining one-third (l/3). It is my desire that this farm be retained, if possible, however, I realize that the Carl R. Dick Estate may at some future time desire its interest sold. In such case, the Trustee herein is fully authorized to join in the sale of said farm so that the farm may be sold as a whole; he is fully authorized and empowered to make any contract necessary, and also to make deed or deeds conveying my interest herein as fully as I might do if living. My Trustee is also fully empowered to purchase my brother's one-third interest if he feels it is for the best interest of my estate so to do. In connection with the sale of real estate made by the Trustee herein, I waive bond required by statute, and no purchaser shall see to the proper application of the purchase price. If it should at any time during the life of the trust herein created be the desire of the Trustees of the Carl R. Dick Estate and the desire of George F. Dick, III, to partition said farm lands in kind, then George F. Dick, III, Trustee, in his discretion may agree to a partition, division or exchange or a sale and convert such undivided interest into an interest in severalty, or in

cash, and to that end the said George F. Dick, III, Trustee, is fully authorized to make all necessary contracts, and as such Trustee to execute all necessary deeds of partition and accept all conveyances which may be necessary or appropriate to accomplish such partition.

Said Trustee is fully authorized and directed to hold as an investment in said Trust Estate the Capital Stock of the Peoples Bank of Bloomington, which shall be a part of my Trust Estate. If it becomes necessary at any time to sell and dispose of said Stock due to the fact that any of my children find it necessary to go into the corpus of said Estate, then in that case the Trustee is empowered to sell and dispose of it. Said Trustee is also authorized to dispose of any other property in said Trust if he thinks it is for the best interest of said estate.

I desire my son, George F. Dick, III, to vote any and all Capital Stock of the Peoples Bank of Bloomington in said Trust Estate during the life of said Trust.

The income from said Trust Estate shall be divided into three equal parts and one part paid to each of my three daughters hereinabove names. I request that said distribution of income be made in quarterly payments.

The trust for my daughter, Eleanor D. Lyon, shall continue for and during her natural life, however, during her life should the income from her share in said Trust Estate not be sufficient for her proper maintenance and support, then the Trustee in his discretion is authorized to allow her to withdraw from the corpus such sums as may be necessary from time to time for her personal and individual comfort mainte-

nance and support. Whatever is left in the corpus of said estate belonging to Eleanor D. Lyon at the time of her death, shall be equally divided between Helen Dick, Helen A. Dick and George F. Dick, III, and by the Trustee paid over to them.

At the death of my daughter, Eleanor D. Lyon, I desire the Trusts herein established for my three daughters shall cease and determine, and I authorize the Trustee herein to pay and turn over to my daughter, Helen Dick, her one-third interest in said Trust, less any withdrawals of principal made by her, and also to pay to Helen A. Dick, her one-third interest in said Trust, less any withdrawals of principal made by her. The Trustee is further authorized to distribute whatever remains in the corpus of the Trust established for my daughter, Eleanor D. Lyon, equally between my daughters, Helen Dick and Helen A. Dick, and my son, George F. Dick, III. In the event that the income from the Trust Estate going to Helen Dick and Helen A. Dick should not be sufficient for the proper maintenance and support of either of them, then the Trustee in his discretion is authorized to allow either one or both of them to withdraw from the corpus of their Trusts such sum as may be necessary from time to time for her or their personal and individual comfort, maintenance and support.

The Trustee shall keep a record of any withdrawals of principal made by any of my daughters during the life of the Trusts herein established and shall make distribution of the income from said Trusts, taking into account the withdrawals from said individual trusts on account of any withdrawals of corpus made individually by any of my daughters.

No interest under this Will shall be transferable

or assignable by any beneficiary (except by the Wills of Helen Dick and Helen A. Dick as provided above) or subject to the claims of their creditors, and all income distributions shall be paid to each beneficiary in person and not on any written order or assignment from any beneficiary.

The Trustee shall be entitled to reasonable compensation for his services.

My wife, Althea M. Dick, in her Will has established a Trust similar to the one I have established here and I authorize the Trustee in each of said Wills to consolidate the Trust in my Will and my wife's Will and to operate it as one Trust Estate.

I nominate and appoint my wife, Althea M. Dick, and my son, George F. Dick, III, to be the Executors of this my Last Will and Testament and request the Court to allow them to qualify as such without furnishing bond as required by statute.

I also nominate and appoint my son, George F. Dick III, to be Trustee under this Will and request that he not be required to furnish bond, and in the event that my son, George F. Dick III, should not act as Trustee, or for any reason should cease to act as Trustee, then the Peoples Bank of Bloomington, Bloomington, Illinois, is appointed Trustee under this Will with all the powers and authority given to my son, George F. Dick, III.

Dated at Bloomington, Illinois, this 14th day of July, A.D. 1953.

GEORGE F. DICK JR. (SEAL)

The foregoing instrument was on the date

thereof signed, sealed, published and declared by the said testator, George F. Dick, Jr., as and for his Last Will and Testament in our presence, who at his request and in his presence and in the presence of each other have subscribed our names hereto as witnesses, believing him to be of sound mind and memory at the time said Will was executed.

HELEN J. FIGG of Bloomington, Illinois

FRANK R. FIGG of Bloomington, Illinois

[Exhibit "B," Vol. I, C-36, to Peoples Bank's pleading, Vol. I, C-19, filed Sept. 22, 1982]

LAST WILL AND TESTAMENT OF ALTHEA M. DICK

I, ALTHEA M. DICK, of the City of Bloomington, County of McLean, State of Illinois, being of sound and disposing mind and memory, do hereby declare this to be my Last Will and Testament, hereby revoking all former Wills by me heretofore made.

FIRST: I direct my Executor or Successor Executor, hereinafter named, to pay all of my just debts and funeral expenses from the assets of my Estate, as soon after my decease as is practicable and consistent with the best interests of my Estate; I further direct my said Executor or Successor Executor to pay from the assets of my Estate all Federal estate, inheritance, succession and income taxes that may be levied against my Estate and against the shares being transferred herein so that the same will pass to the legatees, devisees and beneficiaries herein free and clear of such taxes and without obligation upon their part to pay the same.

SECOND: I give and bequeath to my daughter, HELEN DICK, the following described items, having previously given to my said daughter all the furnishings in my residence and other personal belongings:

a) All my silverware, jewelry and personal effects.

b) Any automobile that I may own at the time of my decease.

THIRD: I direct my Executor, hereinafter named, to sell at either private or public sale, upon such terms as my Executor may determine, and at such time that my said Executor may determine in his sole

discretion, my residence property at 116 South Mercer Avenue, Bloomington, Illinois. In reference to the sale of my said property by my Executor, his determination in reference to the sale of the same, to include the terms, time and provisions of sale, shall not be questioned. I further authorize my said Executor to execute such deed or deeds as may be necessary in order to transfer the title of the property sold to the purchaser thereof. I direct that my said Executor pay the net proceeds of the sale of my residence property, after all expenses of sale, to my daughter, HELEN DICK, in fee simple absolute.

FOURTH: I authorize my Executor hereinafter named to sell any or all of my property, unless stated in this, my Last Will and Testament, to the contrary, at private or public sale, in the sole discretion of my Executor, in order to may division of my property, to pay the items provided for in Paragraph FIRST above, and to properly administer my Estate. I further authorize my said Executor to execute such deed, deeds or bills of sale as may be necessary in order to transfer the title of the property sold to the purchaser or purchasers thereof.

FIFTH: I direct my Executor to divide all the rest, remainder and residue of my estate into three (3) equal portions or shares. Said division may be made in cash or in kind, with the selection and the division to be in the sole discretion of my Executor. I give, devise and bequeath one of said shares to my daughter, HELEN DICK, in fees simple absolute.

SIXTH: I give, bequeath and devise one of the three equal shares mentioned in the preceding paragraph to The Peoples Bank of Bloomington, Illinois, as Trustee, upon the following trusts and uses:

a) The Trustee is authorized to retain any investments that I may own upon my decease, including the stock of Peoples Bank of Bloomington,

Illinois, without incurring liability upon its part.

b) The corpus of the Trust shall be invested and reinvested in the discretion of my Trustee and the net income therefrom, after payment of all necessary expenses of administration of the Trust, shall be paid at least quarterly to my daughter, Eleanor Dick Lyon. In the event that the income from the trust is insufficient for the proper care, maintenance, support, medical expenses and hospital expenses of my said daughter, Eleanor Dick Lyon, in the sole discretion of my Trustee, taking into consideration her income from all other sources, the said Trustee is authorized to invade the corpus of the trust for the payment of the care, maintenance, support, medical expenses and hospital expenses of my said daughter.

c) No interest or income under this Trust shall be assignable by any beneficiary or be subject to the claims of his or her creditors, including claims for alimony or separate maintenance.

d) Upon the decease of my daughter, ELEANOR DICK LYON, this Trust shall terminate and the corpus thereof, together with any accrued income, shall be paid to my daughter, HELEN DICK, if she is then living, and if she is not then living, then the Trustee shall pay said corpus and accrued income to my son, GEORGE F. DICK, III, or shall be distributed to or for the benefit of such persons or organizations, including my said son's estate, in such proportions and subject to such trusts and conditions as my said son directs by his Will specifically referring to this power to appoint, in the event that he is not living at the termination of said Trust.

SEVENTH: I give, bequeath and devise the third of the three shares described in the second preceding paragraph, of the said rest, remainder and residue of my estate, to the Peoples Bank of Bloomington, as Trustee, upon the following trusts and

uses:

a) That the said Trustee is authorized to retain any investments that I may own upon my decease, including the stock of the Peoples Bank of Bloomington, Illinois, without incurring liability upon its part.

b) That the Trustee shall invest and reinvest the corpus of the Trust, and after the payment of all necessary expenses of administering said Trust, shall pay the net income to my daughter, HELEN A. DICK YEAGER, at least quarterly. In the event the income from said Trust is, in the opinion of the Trustee, taking into consideration the income of my said daughter, HELEN A. DICK YEAGER, from other sources, insufficient for her proper care, maintenance, support, medical expenses and hospital expenses, the Trustee in its sole discretion, may invade the corpus of the Trust for the payment of said care, maintenance, support, medical expenses and hospital expenses. My said daughter, HELEN A. DICK YEAGER, has several children, and my Trustee is instructed to consider their needs for care, maintenance, support and education in determining the needs of my daughter, HELEN A. DICK YEAGER.

c) No interest under this Trust shall be assignable by any beneficiary or be subject to the claims of his or her creditors, including claims for alimony or separate maintenance.

d) That upon the death of my daughter, HELEN A. DICK YEAGER, this Trust shall continue for the benefit of her children, until the youngest child of my said daughter has attained the age of 25 years and at said time this Trust shall terminate, and the corpus thereof, together with accrued income, shall be distributed to the children of HELEN A. DICK YEAGER in equal portions, share and share alike, provided further that if any of said children of HELEN

A. DICK YEAGER have predeceased said termination date leaving issue surviving, the share of said deceased child shall be distributed to the child's issue per stirpes and not per capita. During the continuation of the Trust until the youngest child of the said HELEN A. DICK YEAGER has reached the age of 25 years, my Trustee shall pay the net income of the Trust to said children at least quarterly, in equal portions, share and share alike. My Trustee is further authorized to invade the corpus of the Trust for the care, maintenance, support, education, medical and hospital expenses of the said children of HELEN A. DICK YEAGER, in the sole discretion of my said Trustee, taking into consideration their income from all other sources.

EIGHTH: That my said Trustee, in reference to both of the above created trusts, is authorized and empowered to manage, care for, invest and reinvest, improve, protect, control, mortgage, pledge, sell for cash or on credit at public or private sale, partition, exchange or otherwise deal with the trust properties, or any part thereof, in its discretion, in any and every way in which any owner having unrestricted ownership and control thereof could manage, care for, invest and reinvest, improve, protect, control, mortgage, pledge, sell, partition, exchange or otherwise deal with the same. In connection with the sale of said trust property to carry out the provisions of this Trust, said Trustee's decision as to the time and method of sale of said property shall not be questioned. The Trustee shall have power to vote any stock or other voting securities held hereunder; to issue proxies to vote the same to any person or persons; and to exercise or sell any subscription rights. In connection with the sale of real estate or any interest therein, said Trustee shall, at its discretion, sell said property at public or private sale, and upon such terms as seem most advisable to said Trustee, and said Trustee is given full power to make,

execute and deliver all necessary instruments to pass title to the purchaser or purchasers thereof so that they will be vested with full and complete title to said property the same as I might do if living. The Trustee shall further pay all taxes or lawful assessments which may be levied against any of the Trust property. Said Trustee may incur and shall pay any necessary expenses in connection with the proper administration of said Trust, which, together with its own reasonable compensation, shall be charged against either the income or the principal of said Trust, or both.

NINTH: That in reference to the above created Trust for the benefit of my daughter, HELEN A. DICK YEAGER, I direct that notwithstanding any provision contained in this, my Last Will and Testament, pertaining to said Trust, at the end of 21 years after the death of my daughter, HELEN A. DICK YEAGER, the Trustee shall distribute the corpus of the Trust, together with accrued income, to her children then living and to the issue of any deceased child, as is provided in said Trust, unless distribution was made sooner under the provisions of Paragraph SEVENTH (d).

LASTLY: I nominate, constitute and appoint my son, GEORGE F. DICK, III, as Executor of this, my Last Will and Testament, to act in said capacity without bond. In the event that my said son, GEORGE F. DICK, III, predeceases me or fails to qualify as Executor for any reason whatsoever, then I nominate, constitute and appoint the Peoples Bank of Bloomington, Illinois, as Successor Executor of this, my Last Will and Testament. I further appoint the said Peoples Bank of Bloomington, Illinois, as Trustee of the above created Trusts.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of January, A.D., 1969.

ALTHEA M. DICK (SEAL)

The foregoing instrument was at the date thereof, signed, sealed, published and declared by ALTHEA M. DICK, as and for her Last Will and Testament, in the presence of us, who at her request, in her presence, and in the presence of each other have subscribed our names as witnesses thereto believing the said ALTHEA M. DICK to be of sound mind and memory, free from all restraint and from all undue influence at the time she and we so subscribed our names as Testatrix and as witnesses as aforesaid.

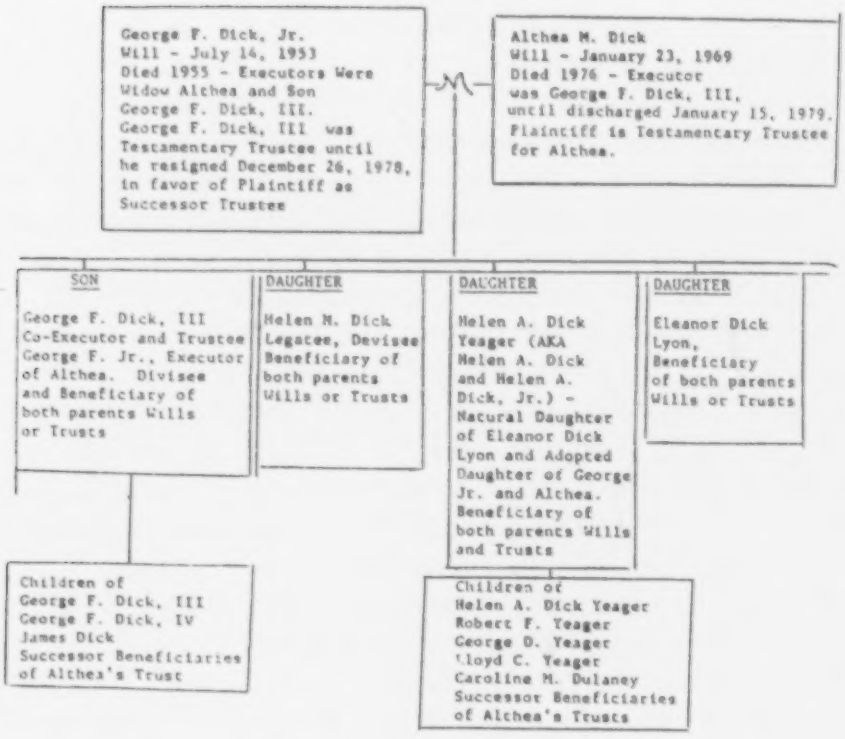
MAUD R. SHINALL of Bloomington, Ill.
HAROLD L. SHINALL, M. D. of Bloomington, Illinois

Appendix

[Exhibit "C," Vol. I, C-38, to Peoples Bank's pleading, Vol. I, C-19, file Sept. 22, 1982]

EXHIBIT "C"

DICK FAMILY RELATIONSHIPS



BEST ORIGINAL COPY

C-38

Appendix

[Page 1 of Exhibit "D," Vol. I, C-39, to Peoples Bank's pleading, Vol. I, C-19, filed Sept. 22, 1982]

SUMMARY OF LOANS BY AND REPAYMENTS TO
GEORGE F. DICK, JR. TRUST MADE BY
GEORGE F. DICK III, AS TRUSTEE
TAKEN FROM RECORDS OF GEORGE F. DICK III

Dates and Transaction	Loans to George F. Dick III or his then wife, Marilyn Dick	Payments of Principal or Interest on Loans
6/11/71 Loan to Marilyn Dick	$ 10,000	
6/17/71 Loan to Marilyn Dick	20,000	
7/1/71 Loan to Marilyn Dick	49,000	
7/19/71 Interest on 1st 2 loans through 6/30/71		$ 62.50
12/20/71 Interest for one month on $79,000		329.20
12/20/71 Interest for one month on $79,000		329.20
12/20/71 Principal Payment		100.00
4/19/72 Principal Payment from Marilyn		800.00
4/19/72 Principal Payment		700.00
5/17/72 Principal Payment		20,000.00
5/17/82 Interest to 7/1/72 - almost 9 mos. on $57,400		2,148.27
6/30/72 Loan	2,000	
7/20/72 Principal Payment		50.00

Appendix

[Page 2 of Exhibit "D" to Peoples Bank's pleading, Vol. I, C-19, filed Sept. 22, 1982]

Dates and Transaction	Loans to George F. Dick III or his then wife, Marilyn Dick	Payments of Principal or Interest on Loans
10/20/72 Interest on $59,350 from 7/1/72 to 10/31/72 (4 mos.)		741.87
11/28/72 Principal Payment		100.00
5/28/73 Interest on $59,250 from 11/1/72 to 5/31/73		1,728.16
5/29/73 Loan	2,000	
8/9/73 Loan to Marilyn Dick	3,000	
9/21/73 Loan to George F. Dick III	3,000	
11/10/73 Interest to 12/31/73		1,886.47
2/22/74 Interest on $67,250 for January and February		560.42
6/5/74 Loan	2,000	
6/18/74 Interest through 6/30/74 on $69,250		1,127.83
1/6/75 Interest through 12/31/74		1,731.25
1/4/75 Loan to George F. Dick III	12,000	
11/17/75 Apply to Interest		1,500.00
12/8/75 Interest Balance through 12/31/75		2,537.50

Appendix

[3rd/last page of Exhibit "D" to Peoples Bank's pleading, Vol. I, C-19, filed Sept. 22, 1982]

Dates and Transaction	Loans to George F. Dick III or his then wife, Marilyn Dick	Payments of Principal or Interest on Loans
6/2/76 Interest through 6/30/76		$ 2,031.25
6/29/76 Loan to George F. Dick III	$ 3,000	
9/15/76 Paid Principal		2,250.00
11/4/76 Loan to George F. Dick III	1,000	
11/26/76 Loan to George F. Dick III	1,000	
12/22/76 Interest Payment		1,000.00
12/31/76 Interest through 12/31/76 6% as of 11/1/76		1,214.98
4/20/77 Interest for 1st quarter at 6%		1,260.00
6/30/77 Interest for 2nd quarter at 6%		1,260.00
9/20/77 Loan to George F. Dick III	4,900	
10/7/77 Interest through 9/30/77		1,268.05
1/4/78 Interest through 12/31/77		1,333.50
3/27/78 Interest through 3/31/78		1,333.50
6/19/78 Principal and Interest paid		88,900.00
6/19/78 Principal and Interest paid		1,169.10

Appendix

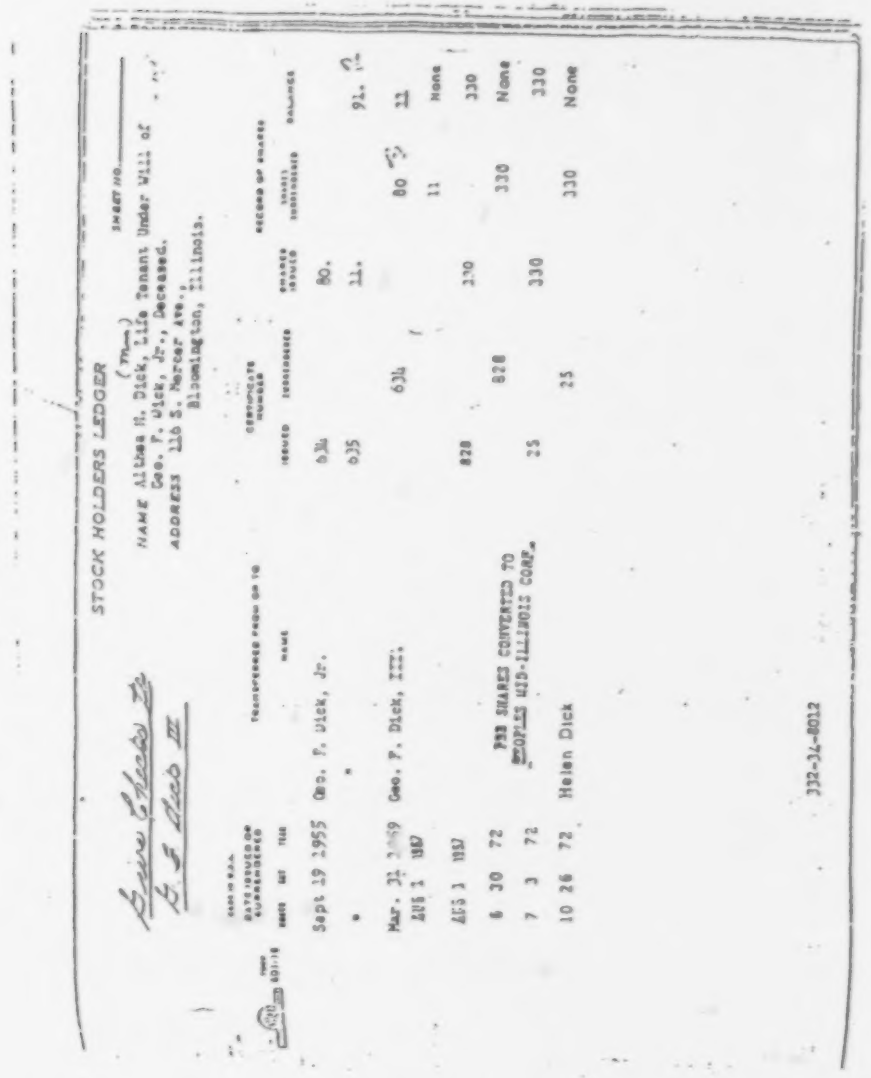
[Copy of document marked as the Bank's exhibit during the February 22, 1982 pre-trial conference.]

Appendix

[Copy of document marked as the Bank's exhibit during the February 22, 1982 pre-trial conference.]

Appendix

[Copy of document marked as the Bank's exhibit during the February 22, 1982 pre-trial conference.]



STOCK HOLDERS LEDGER

SHEET NO.

NAME Althea M. Dick, Life Tenant Under Will of Geo. F. Dick, Jr., Deceased.

ADDRESS 116 S. Mercer Ave., Bloomington, Illinois.

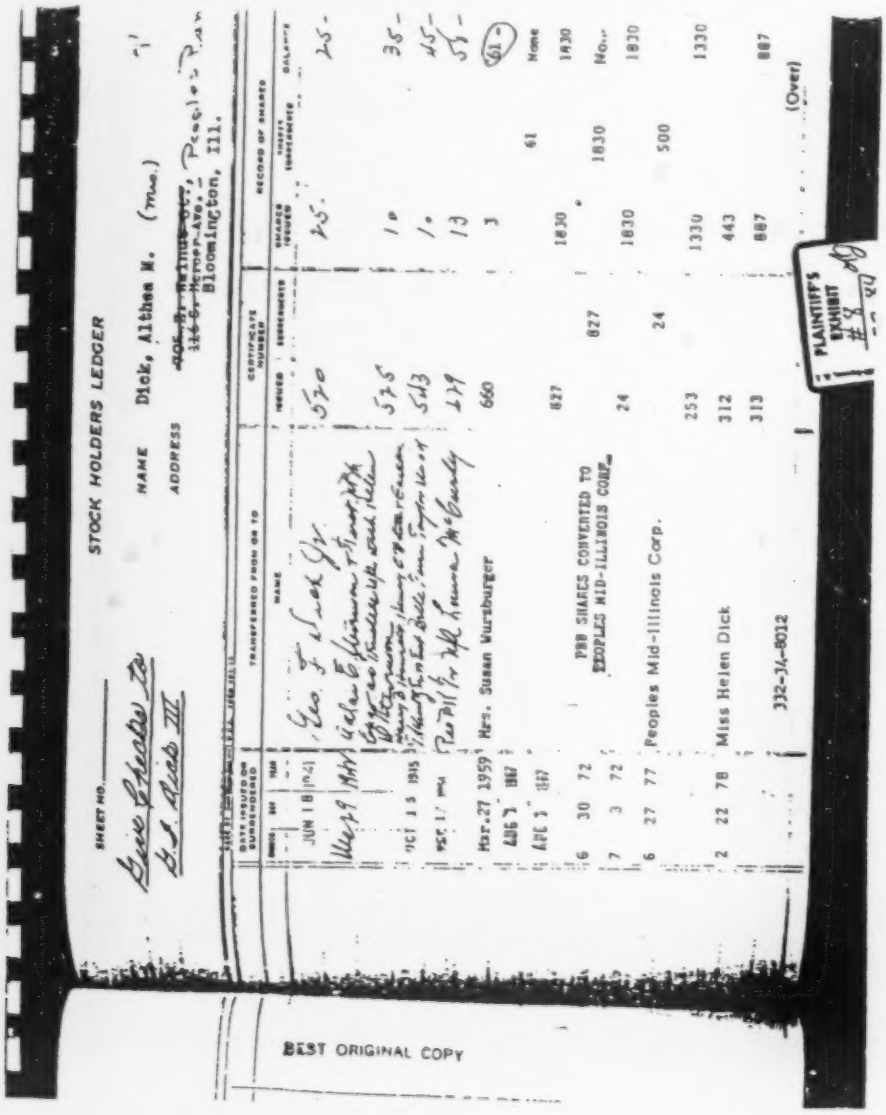
DATE ISSUED OR SURRENDERED	TRANSFERRED FROM OR TO NAME	CERTIFICATE NUMBER ISSUED	CERTIFICATE NUMBER SURRENDERED	RECORD OF SHARES SHARES ISSUED	RECORD OF SHARES SHARES TRANSFERRED	RECORD OF SHARES BALANCES
Sept 19 1955	Geo. F. Dick, Jr.	634		80.		
"	"	635		11.		91.
Mar. 31 1969	Geo. F. Dick, III.		634		80	11
AUG 1 1957					11	None
AUG 1 1957		828		330		330
6 30 72	733 SHARES CONVERTED TO PEOPLES MID-ILLINOIS CORP.		828		330	None
7 3 72		25		330		330
10 26 72	Helen Dick		25		330	None

332-34-8012

PLAINTIFF'S EXHIBIT #7 2-22-82

Appendix

[Copy of document marked as the Bank's exhibit during the February 22, 1982 pre-trial conference.]



STOCK HOLDERS LEDGER

SHEET NO. ____

NAME Dick, Althea M. (mrs.)

ADDRESS 405 E. Market St., Peoria 2, Ill.
~~114 E. Heron Ave.~~
Bloomington, Ill.

DATE ISSUED OR SURRENDERED			TRANSFERRED FROM OR TO	CERTIFICATE NUMBERS		RECORD OF SHARES		
MONTH	DAY	YEAR	NAME	ISSUED	SURRENDERED	SHARES ISSUED	TOTAL SURRENDERED	BALANCE
JUN	18	1941	Geo. [illegible]	5720		25.		25-
[illegible]		[illegible]	[illegible]	[illegible]		[illegible]		[illegible]
OCT	13	1945	[illegible]	5735		10		35-
DEC	17	1946	[illegible]	5743		10		45-
			[illegible]	7179		13		58-
Mar.	27	1959	Mrs. Susan Wurzburger	660		3		(61)
AUG	7	1967					61	None
APR	3	1967		827		1830		1830
6	30	72	PBB SHARES CONVERTED TO PEOPLES MID-ILLINOIS CORP.		827		1830	None
7	3	72		24		1830		1830
6	27	77	Peoples Mid-Illinois Corp.	24			500	
				253		1330		1330
2	22	78	Miss Helen Dick	312		443		
				313		887		887
			332-34-8012					(Over)

PLAINTIFF'S EXHIBIT #8 2-22-82

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[Copy of document marked as the Bank's exhibit during the February 22, 1982 pre-trial conference.]

STOCK HOLDERS LEDGER

SHEET NO. _____

NAME

ADDRESS

DATE ISSUED OR SURRENDERED	TRANSFERRED FROM OR TO	CERTIFICATE NUMBER		RECORD OF SHARES		
	NAME	ISSUED	SURRENDERED	SHARES ISSUED	SHARES SURRENDERED	BALANCE
4 17 78	3 for 1 stock split	342		1774		2661
12 28 78	PBB Co.		313		887	1774
12 28 78	PBB Co.		342		1774	-0-

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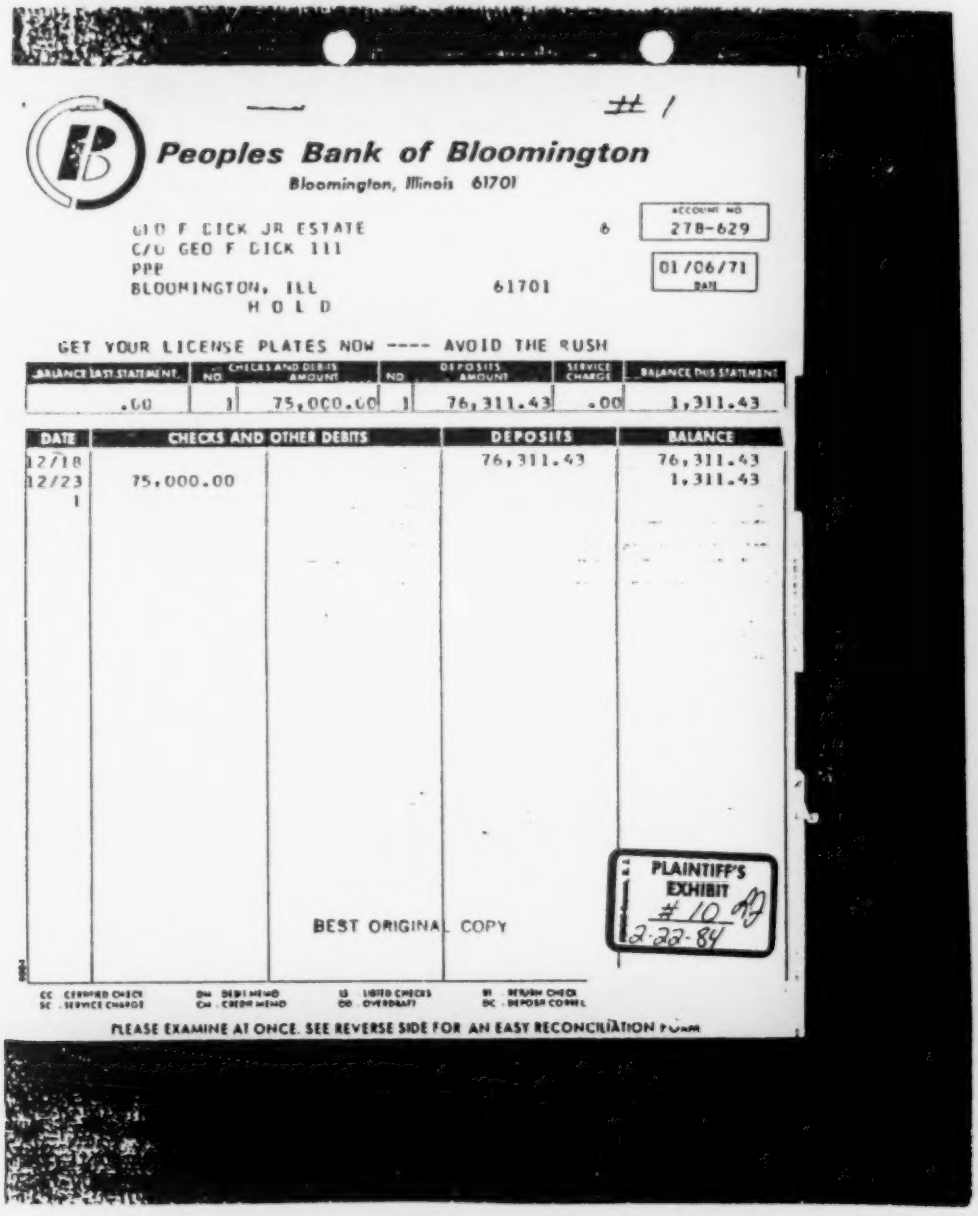
Appendix

[Copy of document marked as the Bank's exhibit during the February 22, 1982 pre-trial conference.]



#1

Peoples Bank of Bloomington
Bloomington, Illinois 61701

GEO F DICK JR ESTATE
C/O GEO F DICK III
PPP
BLOOMINGTON, ILL 61701
HOLD

ACCOUNT NO 278-629
01/06/71 DATE

GET YOUR LICENSE PLATES NOW ---- AVOID THE RUSH

BALANCE LAST STATEMENT	CHECKS AND DEBITS NO	CHECKS AND DEBITS AMOUNT	DEPOSITS NO	DEPOSITS AMOUNT	SERVICE CHARGE	BALANCE THIS STATEMENT
.00	1	75,000.00	1	76,311.43	.00	1,311.43

DATE	CHECKS AND OTHER DEBITS	DEPOSITS	BALANCE
12/18		76,311.43	76,311.43
12/23	75,000.00		1,311.43
1			

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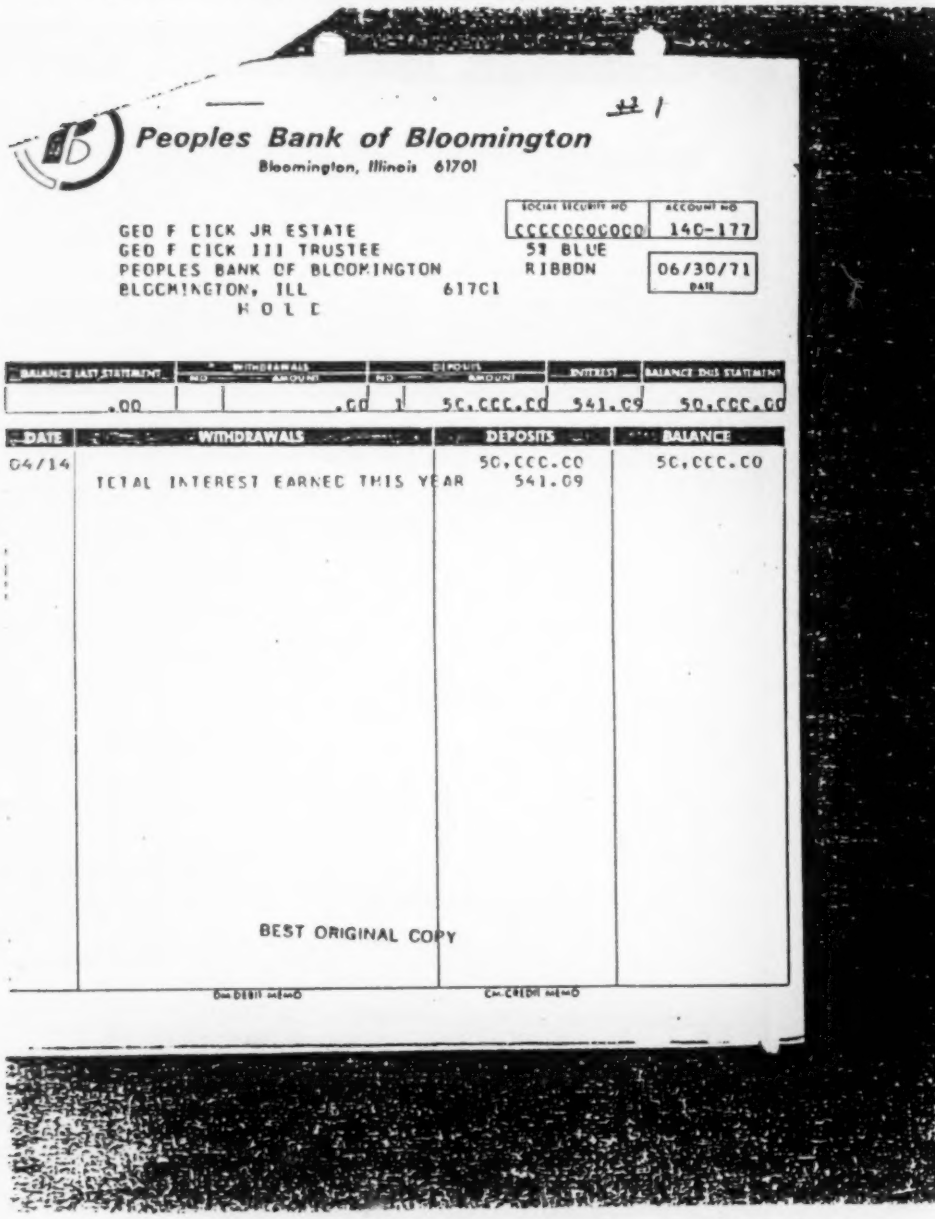
PLAINTIFF'S EXHIBIT #10 2-22-84

CC : CERTIFIED CHECK
SC : SERVICE CHARGE
DM : DEBIT MEMO
CM : CREDIT MEMO
LI : LISTED CHECKS
OD : OVERDRAFT
RI : RETURN CHECK
DC : DEPOSIT CORRECTION

PLEASE EXAMINE AT ONCE. SEE REVERSE SIDE FOR AN EASY RECONCILIATION FORM

Appendix

[Copy of document marked as the Bank's exhibit during the February 22, 1982 pre-trial conference.]



Peoples Bank of Bloomington
Bloomington, Illinois 61701

GEO F CICK JR ESTATE
GEO F CICK III TRUSTEE
PEOPLES BANK OF BLOOMINGTON
BLOOMINGTON, ILL 61701
H O L D

SOCIAL SECURITY NO	ACCOUNT NO
CCCCCCCCCCC	140-177

5¢ BLUE RIBBON

06/30/71 DATE

BALANCE LAST STATEMENT	WITHDRAWALS NO	WITHDRAWALS AMOUNT	DEPOSITS NO	DEPOSITS AMOUNT	INTEREST	BALANCE THIS STATEMENT
.00		.00	1	50,000.00	541.09	50,000.00

DATE	WITHDRAWALS	DEPOSITS	BALANCE
04/14		50,000.00	50,000.00
	TOTAL INTEREST EARNED THIS YEAR	541.09	

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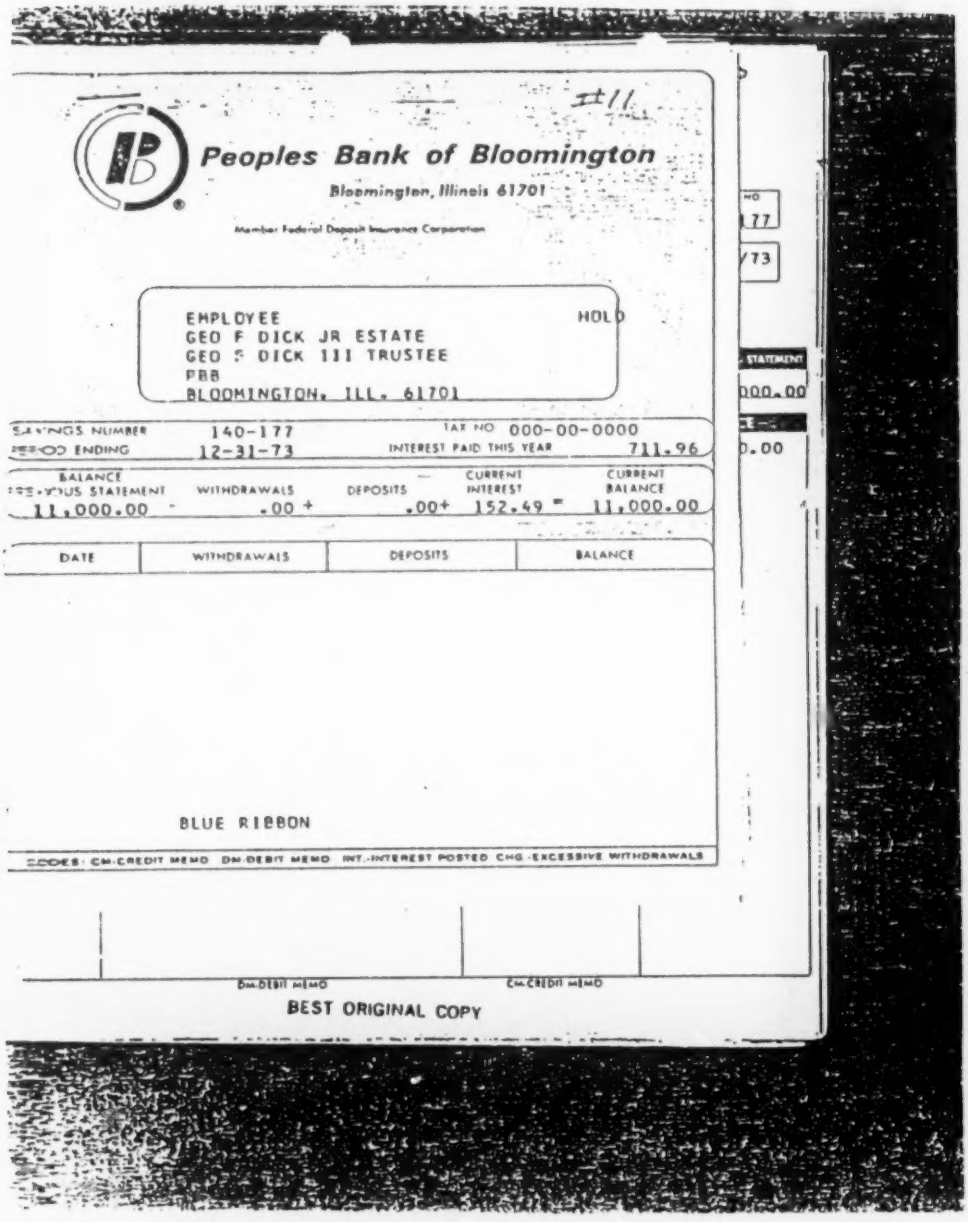
DM-DEBIT MEMO CM-CREDIT MEMO

[Copy of document marked as the Bank's exhibit during the February 22, 1982 pre-trial conference.]



#11

Peoples Bank of Bloomington

Bloomington, Illinois 61701

Member Federal Deposit Insurance Corporation

EMPLOYEE HOLD
GEO F DICK JR ESTATE
GEO F DICK III TRUSTEE
PBB
BLOOMINGTON, ILL. 61701

SAVINGS NUMBER 140-177 TAX NO 000-00-0000
PERIOD ENDING 12-31-73 INTEREST PAID THIS YEAR 711.96

BALANCE PREVIOUS STATEMENT	WITHDRAWALS	DEPOSITS	CURRENT INTEREST	CURRENT BALANCE
11,000.00	- .00 +	.00 +	152.49 =	11,000.00

DATE	WITHDRAWALS	DEPOSITS	BALANCE

BLUE RIBBON

CODES: CM-CREDIT MEMO DM-DEBIT MEMO INT.-INTEREST POSTED CHG.-EXCESSIVE WITHDRAWALS

DM-DEBIT MEMO CM-CREDIT MEMO

BEST ORIGINAL COPY

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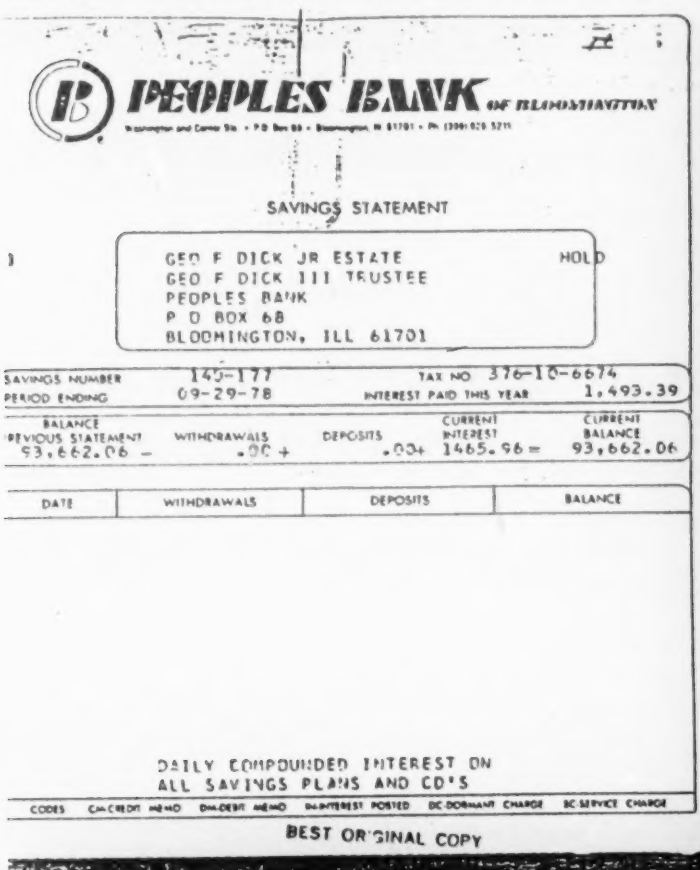


PEOPLES BANK OF BLOOMINGTON

SAVINGS STATEMENT

GEO F DICK JR ESTATE — HOLD
GEO F DICK III TRUSTEE
PEOPLES BANK
P O BOX 68
BLOOMINGTON, ILL 61701

SAVINGS NUMBER	140-177	TAX NO	376-10-6674
PERIOD ENDING	09-29-78	INTEREST PAID THIS YEAR	1,493.39

BALANCE PREVIOUS STATEMENT	WITHDRAWALS	DEPOSITS	CURRENT INTEREST	CURRENT BALANCE
93,662.06 -	.00 +	.00 +	1465.96 =	93,662.06

DATE	WITHDRAWALS	DEPOSITS	BALANCE

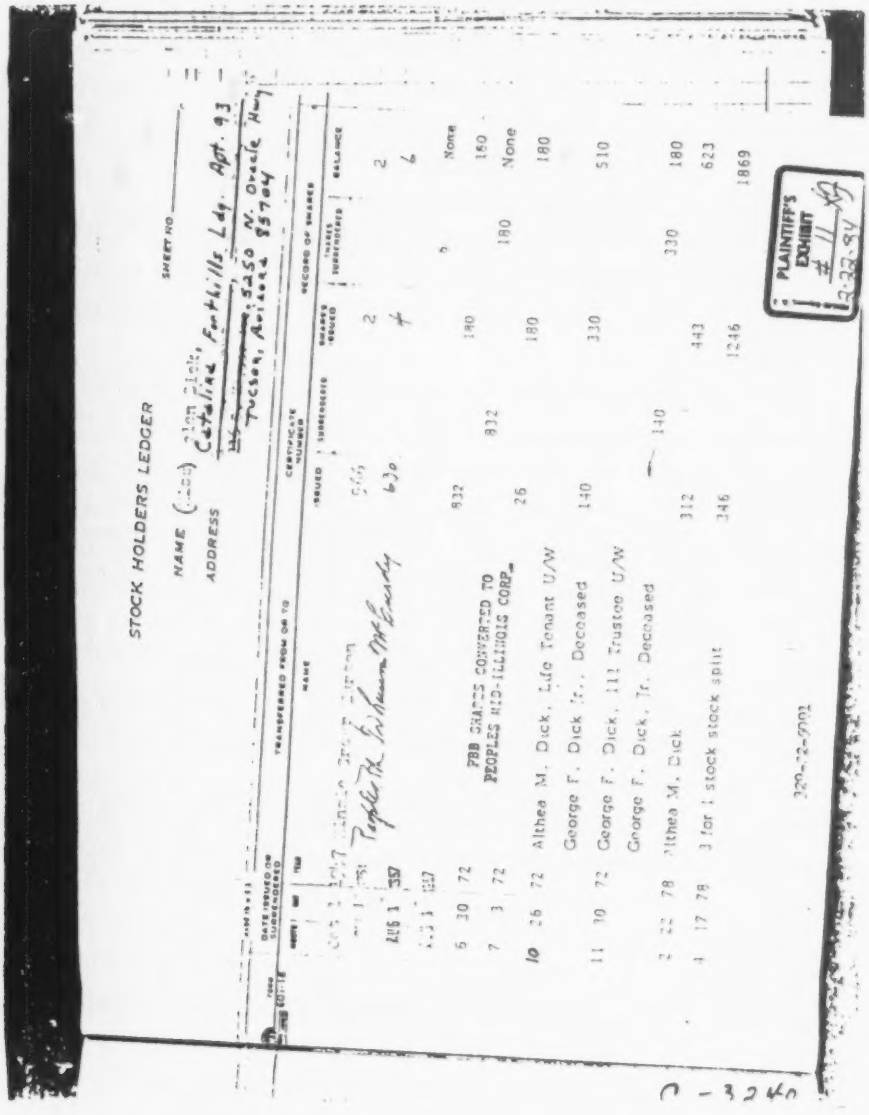
DAILY COMPOUNDED INTEREST ON
ALL SAVINGS PLANS AND CD'S

CODES CM-CREDIT MEMO DM-DEBIT MEMO IN-INTEREST POSTED DC-DORMANT CHARGE SC-SERVICE CHARGE

BEST ORIGINAL COPY

Appendix

[Copy of document marked as the Bank's exhibit during the February 22, 1982 pre-trial conference.]



[Plaintiff Bank's Exhibit #16 marked for identification during pre-trial conference of February 22, 1984, Vol. XV, C-3268]

RESOLUTION TO BE ADOPTED BY BOARD

WHEREAS, the Board of Directors of Peoples Bank of Bloomington, at its regular meeting held Monday, June 12, 1967, adopted the following resolution:

"WHEREAS the Board of Directors believes it is for the best interest of the Bank to increase the Capital Stock of the Bank from $200,000.00 to $600,000.00 by the transfer of $200,000.00 of accumulated Surplus to Capital Stock and the transfer of $2000,000.00 of accumulated Undivided Profits to Capital Stock, and,

WHEREAS the Board of Directors also believes it is for the best interest of the Bank to reduce the par value of each share of stock from $100.00 par value to $10.00 par value."

THEREFORE, BE IT RESOLVED: That the Board of Directors proposes and recommends to stockholders an amendment to the Charter of the Bank increasing the Capital Stock of the Bank from $200,000.00 to $600,000.00 consisting of 60,000 shares of the par value of $10.00 each; and that the increase of Capital Stock be accomplished by the transfer of $200,000.00 from the accumulated Surplus Account to the Capital Stock Account and the transfer of $200,000.00 from the Undivided Profit Account, and that the increase in shares of stock be accomplished by a stock split to reduce the par value to $10.00 par value thus increasing the number of shares to 60,000.

BE IT FURTHER RESOLVED: That subject to the approval by the Stockholders of the increase in the

Bank's Capital Stock and the exchange of certificate [sic] for stock of $10.00 par value [,] the Board of Directors authorizes distribution to Stockholders on August 1, 1967 of the new $10.00 par value stock upon the basis of 30 new shares for each old share.

BE IT FURTHER RESOLVED: That the Cashier of the Peoples Bank of Bloomington be directed to call a Special Meeting of the Stockholders of said Bank [to] be held at its Banking House on Monday, July 24, 1967 at 2:30 P.M. D.S.T. for the purpose of submitting the above resolution and recommendation to the Stockholders, and that the Cashier of the Bank be directed to enclose with the call for the special meeting a copy of these resolutions, that the Cashier be directed to furnish each stockholder entitled to notice of the meeting, a form to be used by him in nominating his proxy to direct the proxy to vote "for" or "against" the proposed resolution.

BE IT FURTHER RESOLVED: That the books for transfer of ownership of stock be closed for transfer at the close of business on June 22, 1967 for determining those stockholders entitled to notice of the said special meeting, and entitled to vote their shares at said meeting.

Appendix

[Plaintiff Bank's Exhibit #15 marked for identification during pre-trial conference of February 22, 1984, Vol. XV, C-3266.]

[PLEASE NOTE: The Bank did not use the correct first page for Minutes of the June 12, 1967 Board of Directors meeting referred to in Exhibits 16 and 14. The first paragraph of both the wrong and the correct first page is, however, identical except for the date.]

//////////

Minutes of the Board of Directors
of the Peoples Bank of Bloomington

[June 12, 1967]

The Board of Directors of the Peoples Bank of Bloomington met at the office of the Bank on Monday, [June 12,] 1967 at 2;30 p.m., the following Directors being present: Geo. F. Dick III, Robert S. McCormick, Sherman Whitmer, Clinton B. Soper, Harvey A. Hart, Richard T. Dunn, and Ben F. Hiltabrand. The meeting was called to order by Geo. F. Dick III who presided.

* * * * * *

- 2 -

Mr. Dick recommended to the Board that a Special Meeting of the stockholders be called for the purpose of approving a stock dividend and stock split of Peoples Bank of Bloomington stock. His proposal would reduce the par value of each share to $10.00, increase the number of shares to 60,000, and transfer $200,000 from each of the accumulated Surplus account and the Undivided Profit account to the Capital Stock account. After a period of discussion the Board

voted unanimously to adopt resolutions to accomplish these purposes, and a copy of such resolutions in full is attached hereto and made a part of these minutes.

No further business appearing, on motion the Board adjourned.

Geo. F. Dick III
Chairman

Harvey A. Hart
Chairman

Appendix

[Plaintiff Bank's Exhibit #14 marked for identification during pre-trial conference of February 22, 1984, Vol. XV, C-3263]

Special Stockholders Meeting of the Peoples Bank of Bloomington July 24, 1967

Pursuant to notice, a Special Meeting of the stockholders of the Peoples Bank of Bloomington was held at the office of the Bank on Monday, July 24, 1967. The meeting was called to order at 2;30 p.m. by Geo. F. Dick III, and was organized by the election of Richard T. Dunn as Chairman, and Harvey A. Hart as Secretary of the stockholders meeting.

The Secretary read to the assembled stockholders resolutions as adopted by the Board of Directors at their regular meeting on June 12, 1967. These resolutions recommended an amendment to the charter of the Bank, increasing the Capital Account to $600,000.00, increasing the number of authorized and issued shares of stock to 60,000, and reducing the par value of each share from $100.00 to $10.00.

There followed a roll call of the stock which disclosed that the stock was represented as follows:

Stockholders Present in Person or Represented by Duly Authorized Attornies [sic] in Fact:

W. R. Bach	25
Raymond C. Baldwin Estate	20
Geo. F. Dick III	90
Richard T. Dunn	18
Jerry D. Gummere	10

Harvey A. Hart	22
Dr. G. E. Hartenbower	10
Ben F. Hiltabrand	10
Albert H. Hoopes	5
Robert S. McCormick	20
Thomas Gene Paxton or Betty Field Paxton, J.T.	5
Peoples Bank, Tr. U/A Julia Johnson	10
Peoples Bank, Tr. U/A LeRoy G. Whitmer	40
Peoples Bank, Tr. U/W LeRoy G. Whitmer	36
Clinton B. Soper	10
Harry R. Stevens	5
Harry H. Tenney	10
Sherman Whitmer	40

Stockholders Represented by Proxies

* * *	
Althea M. Dick	61
* * *	
Eleanor D. Lyon	7
* * *	

There being 1,907 shares represented of the 2,000 shares outstanding, the Chairman declared the meeting open for the transaction of business.

On motion made by Mr. Geo. F. Dick and seconded by Mr. Ben F. Hiltabrand the following Resolution was unanimously adopted:

(a) The Capital Stock of the Bank shall be increased from $200,000.00 to $600,000.00 by the transfer of $200,000.00 of Surplus Account to the Capital Stock Account and the transfer of $200,000.00 of undivided

Profits Account to the Capital Stock Account.

(b) That the Par Value of each share of Capital Stock of the Bank be decreased from $100.00 per share to $10.00 per share and that the number of shares of Capital Stock be increased from 2,000 shares presently issued of the par value of $100.00 per share to 60,000 shares of the par value of $10.00 per share, all to be effective at the close of business on August 1, 1967.

(c) Effective at the close of business on August 1, 1967 each certificate of stock outstanding in the hands of stockholders be exchanged for certificates of stock of the par value of $10.00 per share upon the basis of 30 new shares for each old share so that there will be 60,000 shares of Capital Stock of the par value of $10.00 per share.

(d) The Board of Directors and the Officers be authorized to do, or cause to be done, any and all things necessary or convenient to carry into effect the purpose of this resolution, including the preparation, execution and filing with the proper authorities of any and all papers, certificates and documents required by law or convenient to effectuate the purpose of this resolution.

Following the favorable vote on the above resolution Mr. William J. Bach complimented the Board of Directors of the Bank for their part in initiating such action.

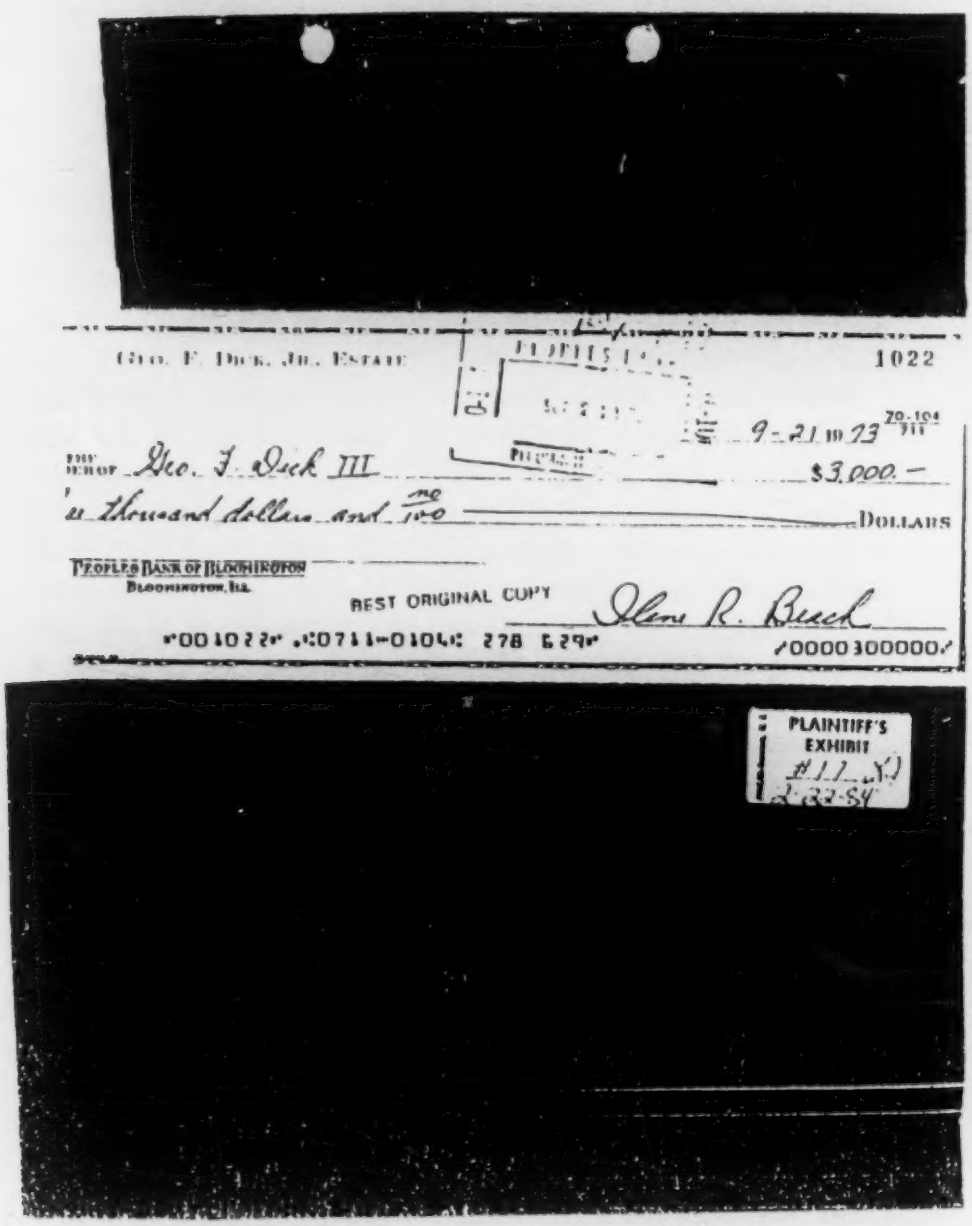
No further business appearing, on motion the meeting was adjourned.

Richard T. Dunn
Chairman

Harvey A. Hart
Secretary

Appendix

[Copy of document marked as the Bank's exhibit during the February 22, 1982 pre-trial conference.]



[Plaintiff Bank's Exhibit #27 marked for identification during pre-trial conference of February 22, 1984, Vol. XVI, C-3512]

RESOLUTON AUTHORIZING STOCK SPLIT

WHEREAS, the Board of Directors of Peoples Mid-Illinois Corporation deems it advisable and therefore proposes and recommends to the stockholders of this Company that the Certificate of Incorporation of the Corporation be amended so as to change the authorized Capital Stock of the Company from Sixty Thousand (60,000) shares of Capital Stock of the par value of Ten Dollars ($10.00) each into one hundred eighty thousand (180,000) shares of Capital Stock of the par value of ten dollars ($10.00) each, and that each share of Capital Stock presently issued and outstanding be changed into three shares of Capital Stock of the par value of ten dollars ($10.00) each, so as to effect a three-for-one stock split of the issued and outstanding shares.

RESOLVED, That subject to the requisite approval of the stockholders at the Special Meeting to be held April 17, 1978, the Articles of Incorporation of this Corporation be amended by amending the first paragraph of Article "FOURTH" of the Certificate of Incorporation so that, as amended, said paragraph shall state; "The total number of shares of stock which the corporation shall have authority to issue is one hundred eighty thousand (180,000) shares of common stock of the par value of ten dollars ($10.00) per share."

RESOLVED, That each share of Capital Stock of the par value of ten dollars ($10.00) each of the Corporation issued and outstanding at the close of business on the date of the taking effect of this

amendment, being the date of the filing and recording of the amendment in the Office of the Secretary of State of Delaware, be changed into three fully paid and non-asessable shares of Capital Stock of the par value of ten dollars ($10.00) each of the Corporation; that all certificates for shares of Capital Stock then issued and outstanding shall thereafter be deemed to be certificates for the same number of shares of Capital Stock and that each holder of record of such certificates at the close of business on the effective date of the amendment shall be entitled to receive additional certificates representing two additional shares of Capital Stock of the par value of ten dollars ($10.00) each for each outstanding share of Capital Stock;

RESOLVED, That upon approval by the stockholders at the Special Meeting of Stockholders on April 17, 1978, of the proposed amendment and stock split, the certificate of amendment of the Articles of Incorporation of the Company shall be filed in the Office of the Secretary of the State of Delaware, and that the stock certificates for the additional shares to be issued shall be mailed on or about May 17, 1978, to the stockholders of record at the close of business as of the date of such filing with the Secretary of State, such stock certificates to represent two additional shares for each shareholder;

RESOLVED, That the proposed stock split shall result in an increase of one million two hundred thousand ($1,200,000) dollars in the aggregate amount of the capital account of Peoples Mid-Illinois Corporation, and this increase shall be funded by transferring that amount from the "Dividends Received" account to the "Capital Stock" account of Peoples Mid-Illinois Corporation.

RESOLVED, That the forms of stock certificates currently representing shares of the Capital Stock of the par value of ten dollars ($10.00) each of the

Corporation be and the same hereby are adopted and approved as the forms of stock certificates representing the new shares of the Capital Stock of the par value of ten dollars ($10.00) per share of the Corporation, effective upon the close of business on the date of the filing of the aforesaid amendment;

RESOLVED, That the proper officers of the Corporation, and any of them, be and they hereby are authorized, empowered and directed to take any and all such actions as in their discretion they deem necessary or expedient to effectuate the purposes of the foregoing resolutions.

George F. Dick III
George F. Dick III, President/Director

Harvey A. Hart
Harvey A. Hart, Vice-President, Director

Appendix

MINUTES OF THE BOARD OF DIRECTORS OF PEOPLES MID-ILLINOIS CORPORATION FEBRUARY 20, 1978

The Board of Directors of Peoples Mid-Illinois Corporation met at 120 N. Center Street, Bloomington, Illinois at 3:30 p.m., on Monday, February 20, 1978, the following Directors being present: George F. Dick, III. Harvey A. Hart, Richard T. Dunn, Ben F. Hiltabrand, Harold L. Hoeferle. The meeting was called to order by George F. Dick, III, who presided.

The minutes of the meeting held January 31, 1978 were read and ordered approved.

The attached resolution proposing a 3 for 1 stock split in the common stock of Peoples Mid-Illinois Corporation currently outstanding was considered and unanimously adopted by the Board of Directors (copy attached). The shareholders of record as of March 17, 1978 shall be notified of a special meeting for the purpose of voting on the proposed amendment to be held April 17, 1978.

No further business appearing, on motion, the Board adjourned.

Jerry D. Gummere
Secretary

Appendix

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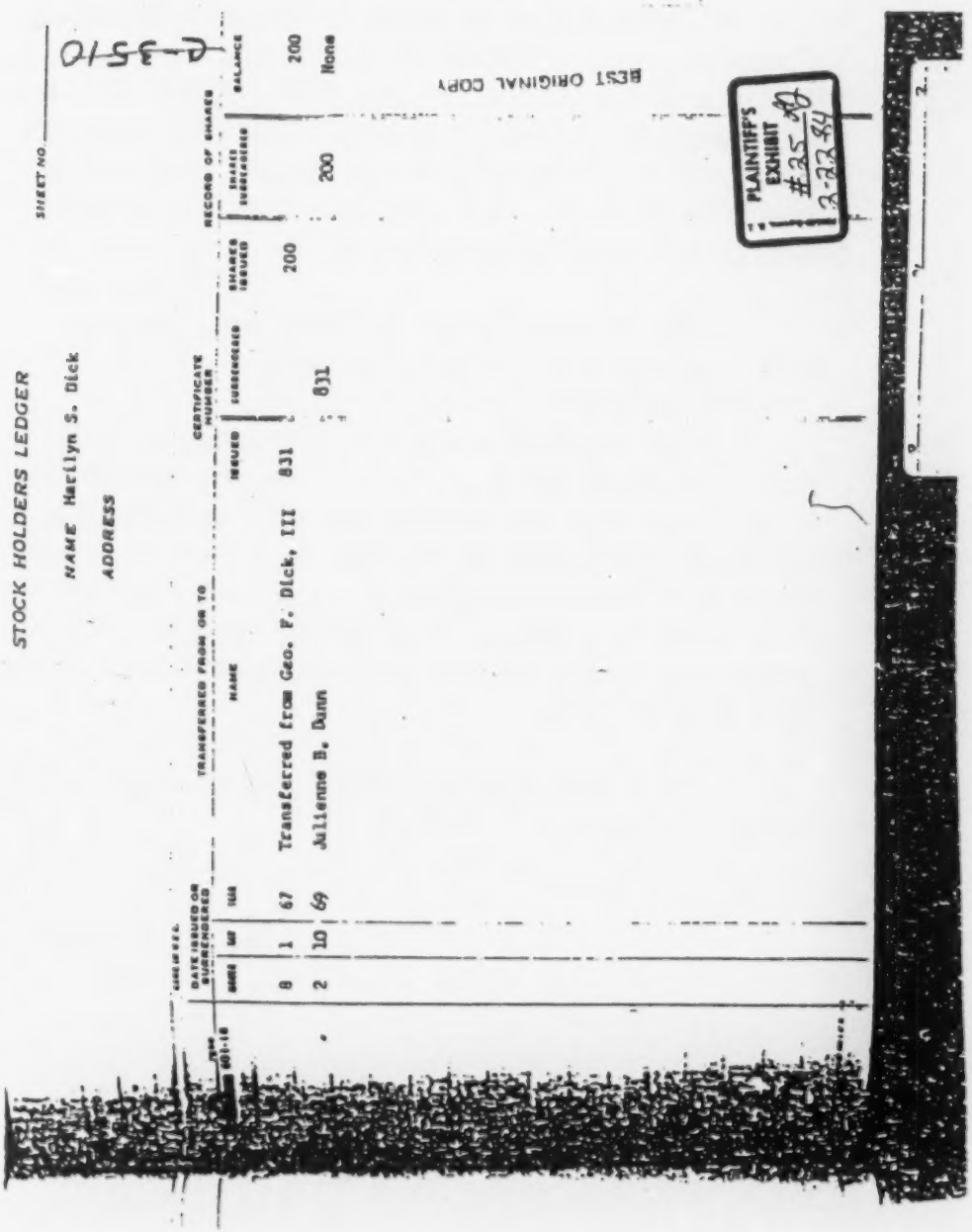

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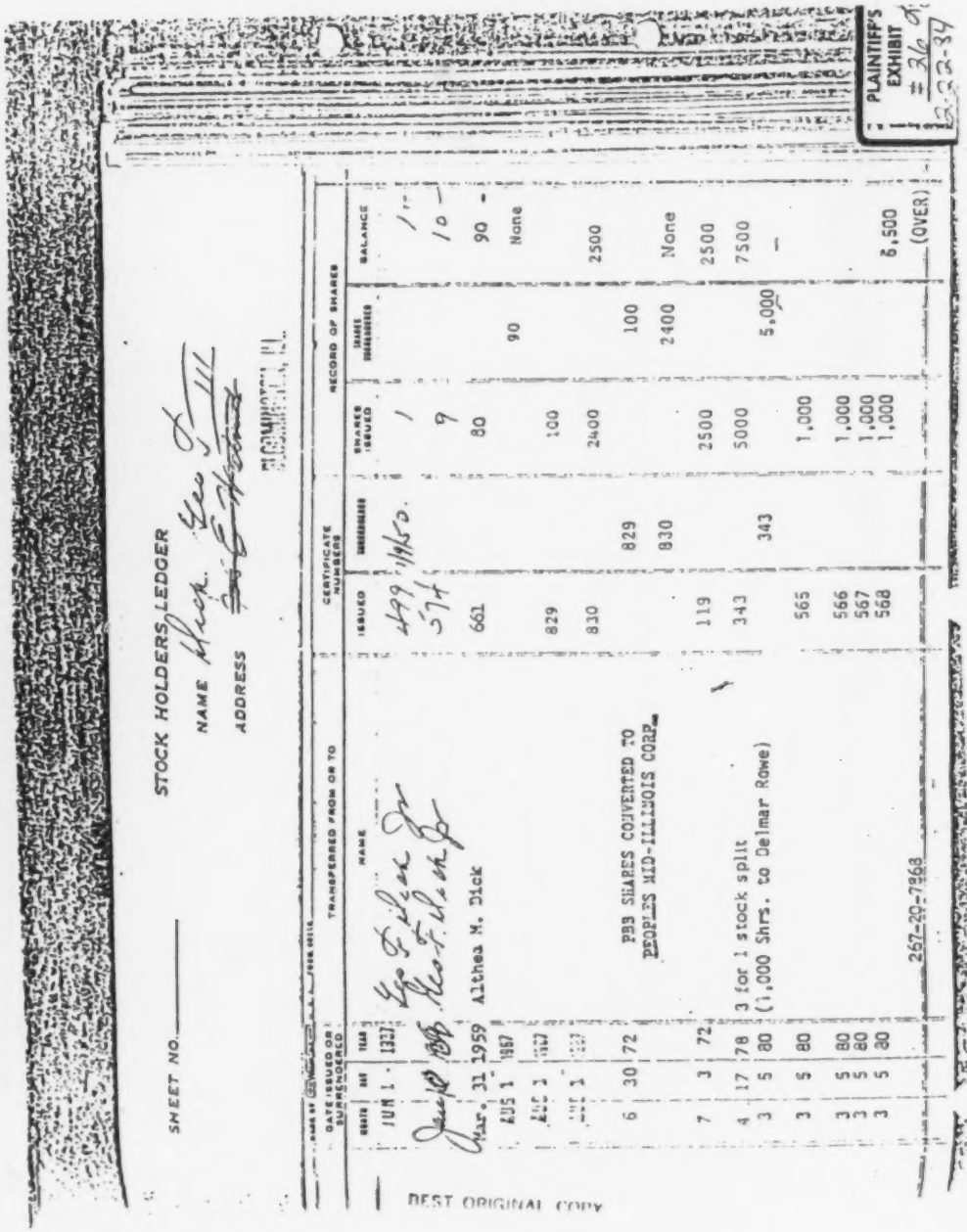

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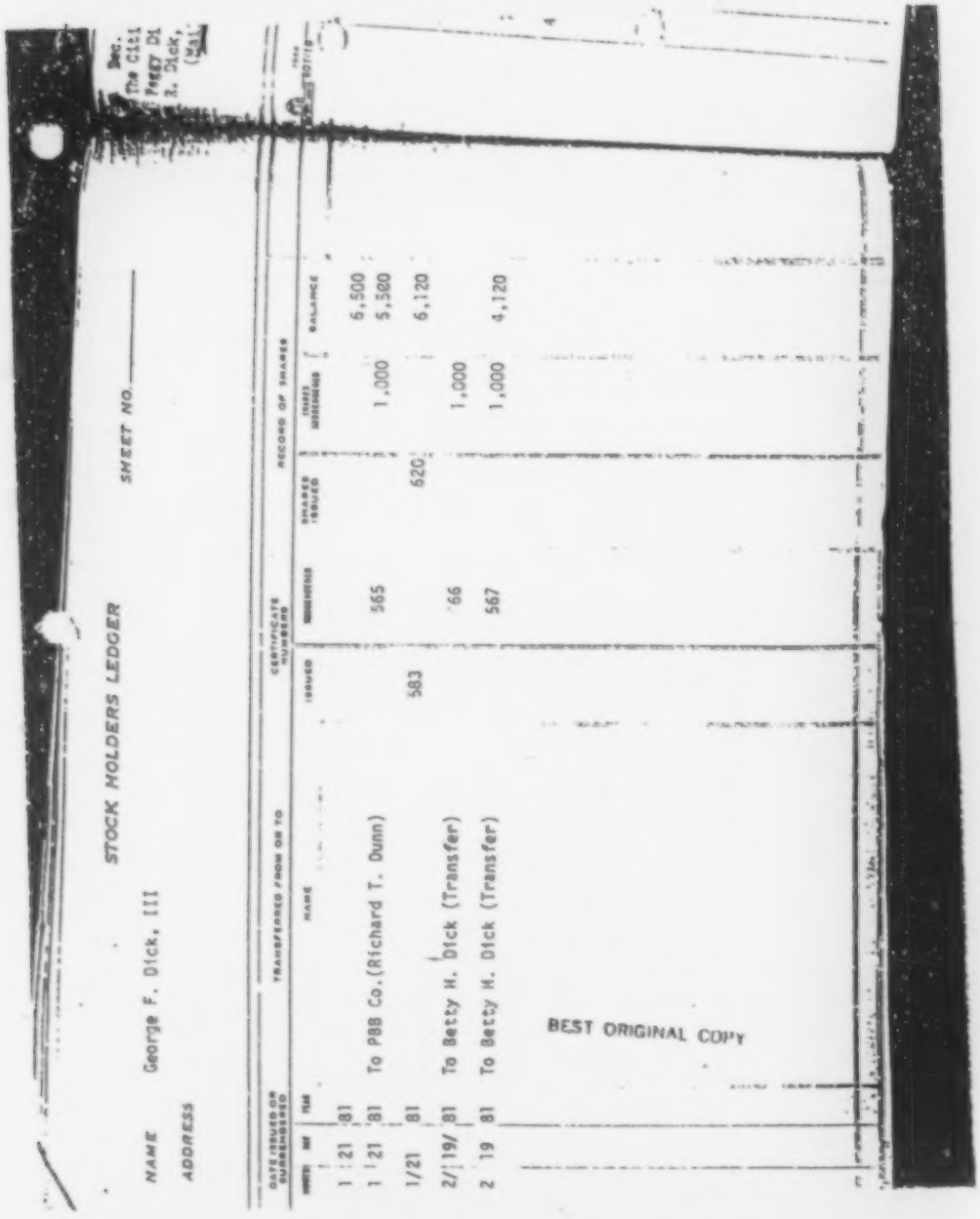

STOCK HOLDERS LEDGER

SHEET NO. _____

NAME George F. Dick, III

ADDRESS

DATE ISSUED OR SURRENDERED		TRANSFERRED FROM OR TO NAME	CERTIFICATE NUMBERS ISSUED	CERTIFICATE NUMBERS SURRENDERED	RECORD OF SHARES SHARES ISSUED	RECORD OF SHARES ISSUED SUBSCRIBED	RECORD OF SHARES BALANCE
1 21	81						6,500
1 21	81	To PBB Co.(Richard T. Dunn)		565		1,000	5,580
1/21	81		583		620		6,120
2/19/	81	To Betty H. Dick (Transfer)		66		1,000	
2 19	81	To Betty H. Dick (Transfer)		567		1,000	4,120

BEST ORIGINAL COPY